

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MUSTAFA A. WHITFIELD,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 06-541 GMS
	:	
WILMINGTON POLICE DEPARTMENT,	:	
	:	
Defendant.	:	

APPENDIX TO DEFENDANT WILMINGTON POLICE DEPARTMENT'S  
OPENING BRIEF IN SUPPORT OF ITS  
MOTION TO DISMISS OR, IN THE ALTERNATIVE,  
MOTION FOR SUMMARY JUDGMENT

Vol. I

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Dated: January 8, 2007

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1. In The United States District Court For The District Of Delaware

Mustafa A. Whitfield 317479

1181 Paddock Road Smyrna Delaware 19977

VS.

Wilmington Police Department

Delaware Attorney General's Office

(Case #)

Civil Complaint

•• Jury Trial Requested

### I. Previous Lawsuits.

A. I file a lawsuit which the number is 1:06-CV-512 and the Judge's name is Gregory M. Sleet.

### II. Exhaustion Of Administrative Remedies

The prisoner grievance system doesn't apply to this complaint.

### III. Defendants

1.) Wilmington Police Department

1.) 4<sup>th</sup> and Walnut Street Wilmington, DE 19801

2.) Attorney General's Office

820 N. French Street Wilmington, DE 19801

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2.

#### IV. Statement Of Claim

1) On October 15, 2002 an arrest warrant was issued for my arrest for a robbery/shooting. Stated as "facts" for my arrested Detective Stephen Misetic of the Wilmington Police Department (WPD) claimed that officers "positively identified" me as a suspect in this crime. Misetic also used as probable cause in this warrant that I fit the victim's description of the suspects. At my trial it was revealed that there were no officers who "positively identified" me. Detective Stephen Misetic made it up to justify my arrest or "hype" the report up. It was also revealed that Misetic changed the victim's description of the suspects to match what I had on.

The victim didn't remember saying what Misetic put in his report but he did remember saying the suspects looked like twins. For some reason Misetic left that out. The victim's transcribed statement clearly states "Uh they had the white tee shirt uh whatever that was over their face and it was like uh a matching outfit like gray or dark black or charcoal uh..." Misetic says "Okay" the victim continues "Like a shirt in their pants like a uh was it uh like a I'm trying to think of that (CU) military might wear. Like you might go to the store and get you know like a matching, a whole outfit. Misetic said "Okay" the victim continues "Like that but it was just that some color (CU) outfit. Misetic asked "Both of them had on the same or...?" The victim said "Yeah seemed it seemed to be" (CU) Misetic said "Okay." Detective Misetic after he heard the victim's description of the suspects (the above is the transcribed



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3.

interviews) Misetic started typing in reports (which he stated as probable cause) and described the other two subjects as black males who had their faces covered with white t-shirts except their eyes. He added that one of these subjects was wearing a dark gray shirt and the other was wearing a dark or black colored shirt."

Then after claiming I was seen running away from the crime (which again couldn't produce one person who saw this) he said: "Furthermore, your affiant can state that upon being stopped, Mustafa Whitfield BMN-17, D.O.B. 2-17-1986 was wearing a dark gray sweater with a white t-shirt under it and Emmanuel Robinson (co-defendant) was wearing a black shirt." Misetic said that as to say the victim didn't see their faces, but look he described their clothing. I had on a light gray sweater with Pepe LaPew covering the whole chest area and Robinson had on a black shirt with light colored jeans. That's why when it came to writing the probable cause Misetic forgot about the matching outfits, the military clothing, the gray, charcoal or dark black, for probable cause you don't see what the victim said yet Misetic said "Okay" three times when the victim gave that description. So Misetic lied about me being identified by officers yet couldn't produce one person to verify this and lied about the victims description of the subjects to fit my description by not saying what the victim said.

On or around May 4, 2006 my stepfather Eddie Whittly took a hand written complaint to the Wilmington Police Station and the Delaware Attorney General's Office. The complaint to the Wilmington Police Department was that I wanted to file a complaint

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4.

against Detective Stephen Misetic for lying about officers positively identifying me as a suspect and lying about the victims description. I was told in July of 06 that because it was over three years ago they will not investigate a complaint against a police officer and that my complaint (my complaint about Misetic lying in my affidavit for probable cause) didn't fall under special circumstances to bypass department rules for an investigation.

- 2.) On January 29, 2004 Deputy Attorney General Martin B. O'Connor said that ~~officers~~ Matthew Derbyshire and David Prado would testify they saw me. O'Connor said that Prado jumped over a fence chasing the suspects, came over another fence, walked down a street and saw me and recognize me (and the guy I was walking with) as the person he was looking for who jumped over the fence. ~~Neither Prado or Derbyshire said they saw me~~, and it was clear prior to trial they didn't from their reports, because neither put it in reports, it was Misetic's fabrication and O'Connor running with it without stopping to ask if it was true. It's in all reports ~~has probable cause~~.

From the complaint filed on or around May 1, 06, the State never responded when I asked for an investigation.

#### V. Relief:

- 1.) I would like for the Wilmington Police Department to investigate Detective Stephen Misetic ~~promptly~~ about my cases false affidavit and others if necessary and I would like to file charges.
- 2.) I would like ~~to~~ for the Attorney General's Office to investigate



S.

Why O'Connor never investigated the reports that Miseric typed yet would go to trial off that information and I would like the A.G.'s office to investigate my complaint they never responded to.

I declare under penalty of perjury that the foregoing is true and correct.

Signed this day of August 24<sup>th</sup> 2006

Mustafa Whitfield

Mustafa Whitfield

317479

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UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWAREMustafa Whitfield

Plaintiff

V.

Wilmington Police Department, Delaware Attorney General's Office

Defendant(s)

APPLICATION TO PROCEED  
WITHOUT PREPAYMENT OF  
FEES AND AFFIDAVIT

CASE NUMBER:

I, Mustafa Whitfield declare that I am the (check appropriate box)

- • Petitioner/Plaintiff/Movant • • Other

in the above-entitled proceeding; that in support of my request to proceed without prepayment of fees or costs under 28 USC §1915, I declare that I am unable to pay the costs of these proceedings and that I am entitled to the relief sought in the complaint/petition/motion.

In support of this application, I answer the following questions under penalty of perjury:

1. Are you currently incarcerated? • • Yes • • No (If "No" go to Question 2)

If "YES" state the place of your incarceration Delaware Correctional Center

Inmate Identification Number (Required): 317479

Are you employed at the institution? NO Do you receive any payment from the institution? NO

Attach a ledger sheet from the institution of your incarceration showing at least the past six months' transactions

2. Are you currently employed? • • Yes • • No

a. If the answer is "YES" state the amount of your take-home salary or wages and pay period and give the name and address of your employer.

b. If the answer is "NO" state the date of your last employment, the amount of your take-home salary or wages and pay period and the name and address of your last employer.

Never had a job

3. In the past 12 twelve months have you received any money from any of the following sources?

- |   |         |        |
|---|---------|--------|
| a. Business, profession or other self-employment  | • • Yes | • • No |
| b. Rent payments, interest or dividends           | • • Yes | • • No |
| c. Pensions, annuities or life insurance payments | • • Yes | • • No |
| d. Disability or workers compensation payments    | • • Yes | • • No |
| e. Gifts or inheritances                          | • • Yes | • • No |
| f. Any other sources                              | • • Yes | • • No |

If the answer to any of the above is "YES" describe each source of money and state the amount received AND what you expect you will continue to receive.

I received money orders  
see last 6 months monthly balance

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AO 340 Reverse (Rev. 10/03)  
DELAWARE (Rev. 4/05)

4. Do you have any cash or checking or savings accounts?      • • Yes      ☒ No
- If "Yes" state the total amount \$ \_\_\_\_\_
5. Do you own any real estate, stocks, bonds, securities, other financial instruments, automobiles or other valuable property?      • • Yes      ☒ No

If "Yes" describe the property and state its value.

6. List the persons who are dependent on you for support, state your relationship to each person and indicate how much you contribute to their support, *OR* state *NONE* if applicable.

None

I declare under penalty of perjury that the above information is true and correct.

8/13/06

DATE

Mustafa Whitfield

SIGNATURE OF APPLICANT

**NOTE TO PRISONER:** A Prisoner seeking to proceed without prepayment of fees shall submit an affidavit stating all assets. In addition, a prisoner must attach a statement certified by the appropriate institutional officer showing all receipts, expenditures, and balances during the last six months in your institutional accounts. If you have multiple accounts, perhaps because you have been in multiple institutions, attach one certified statement of each account.

**U.S. District Court  
District of Delaware (Wilmington)  
CIVIL DOCKET FOR CASE #: 1:06-cv-00541-GMS**

Whitfield v. Wilmington Police Department et al  
Assigned to: Honorable Gregory M. Sleet  
Related Cases: 1:06-cv-00137-GMS  
1:06-cv-00512-GMS  
Cause: 42:1983 Prisoner Civil Rights

Date Filed: 09/01/2006  
Jury Demand: None  
Nature of Suit: 550 Prisoner: Civil  
Rights  
Jurisdiction: Federal Question

**Plaintiff**

**Mustafa A. Whitfield**

represented by **Mustafa A. Whitfield**  
SBI#317479  
Delaware Correctional Center  
1181 Paddock Rd.  
Smyrna, DE 19977  
PRO SE

V.

**Defendant**

**Wilmington Police Department**

**Defendant**

**Delaware Attorney Generals Office**  
*TERMINATED: 11/16/2006*

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Date Filed	#	Docket Text
09/01/2006	<u>1</u>	MOTION for Leave to Proceed in forma pauperis - filed by Mustafa A. Whitfield. (Attachments: # <u>1</u> 6 Months Account Statement)(ead, ) (Entered: 09/05/2006)
09/01/2006	<u>2</u>	COMPLAINT filed pursuant to 42:1983 against Wilmington Police Department, Delaware Attorney Generals Office - filed by Mustafa A. Whitfield.(ead, ) (Entered: 09/05/2006)
09/01/2006	<u>3</u>	Notice of Availability of a U.S. Magistrate Judge to Exercise Jurisdiction (ead, ) (Entered: 09/05/2006)
09/13/2006		Case assigned to Judge Gregory M. Sleet. Please include the initials of the Judge (GMS) after the case number on all documents filed. (rjb, ) (Entered: 09/13/2006)
09/14/2006		CORRECTING ENTRY: The nature of suit has been changed from 440 to 550. (mwm, ) (Entered: 09/14/2006)

09/14/2006	<u>4</u>	ORDER granting Motion to Proceed IFP. Filing Fee of \$350.00 assessed. An initial partial filing fee of \$6.87 shall be required. Plaintiff shall return the attached payment authorization within 30 days. Failure to return payment authorization shall result in dismissal of action without prejudice. (Copy to pltf.). Notice of Compliance deadline set for 10/16/2006. Signed by Judge Gregory M. Sleet on 9/14/06. (mmm) (Entered: 09/14/2006)
09/28/2006	<u>5</u>	Authorization by Mustafa A. Whitfield requesting Prison Business Office to disburse payments to the Clerk of the Court. (copy of assessment order and authorization to Prison Business Office) (mmm) (Entered: 10/02/2006)
11/16/2006	<u>6</u>	MEMORANDUM AND SERVICE ORDER. The claim against the defendant Delaware Attorney General's Office is DISMISSED WITHOUT PREJUDICE. The claim against the defendant Wilmington Police Department will be allowed to proceed. The plaintiff shall return to Clerk original USM 285 form(s). Upon receipt, the U.S. Marshal shall serve process as directed by plaintiff. (Copy to pltf.). Signed by Judge Gregory M. Sleet on 11/16/06. (mmm) (Entered: 11/16/2006)
12/11/2006		USM 285 forms received for the following defendants: the Wilmington Police Department, as well as for the chief executive officer for the City of Wilmington, Delaware. (rpg) (Entered: 12/11/2006)
12/11/2006	<u>7</u>	Letter to Mustafa A. Whitfield from Clerk of the Court. The court has received all required U.S. Marshal 285 forms. The forms, along with copies of the complaint, will be forwarded to the U.S. Marshal for service in accordance with the Court's Orders. (mmm) (Entered: 12/13/2006)
12/13/2006		Exit USM 285 forms to U.S. Marshal. (mmm) (Entered: 12/13/2006)
12/20/2006	<u>8</u>	USM 285 Returned Executed. Wilmington Police Department served on 12/19/2006, answer due 1/8/2007. (mmm) (Entered: 12/20/2006)
12/20/2006	<u>9</u>	USM 285 Returned Executed. Chief Executive Officer for the City of Wilmington served on 12/19/06. (mmm) (Entered: 12/20/2006)

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PACER Service Center			
Transaction Receipt			
12/20/2006 12:26:26			
PACER Login:	ci0009	Client Code:	
Description:	Docket Report	Search Criteria:	1:06-cv-00541-GMS Start date: 1/1/1970 End date: 12/20/2006
Billable Pages:	1	Cost:	0.08



IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MUSTAFA A. WHITFIELD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 06-541-GMS
	)	
WILMINGTON POLICE DEPARTMENT	)	
and DELAWARE ATTORNEY	)	
GENERAL'S OFFICE	)	
	)	
Defendants.	)	

**MEMORANDUM**

The plaintiff Mustafa A. Whitfield ("Whitfield"), a prisoner incarcerated at the Delaware Correctional Center, filed this lawsuit pursuant to 42 U.S.C. § 1983. He appears *pro se* and was granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915. (D.I. 4.) For the reasons discussed below, the claims against the Delaware Attorney General's Office are dismissed as it is immune from suit pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1). Whitfield is allowed to proceed against the remaining defendant.

**I. STANDARD OF REVIEW**

When a litigant proceeds *in forma pauperis*, 28 U.S.C. § 1915 provides for dismissal under certain circumstances. When a prisoner seeks redress in a civil action, 28 U.S.C. § 1915A provides for screening of the complaint by the court. Both 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1) provide that the court may dismiss a complaint, at any time, if the action is frivolous, malicious, fails to state a claim upon which relief may be granted or seeks monetary relief from a defendant immune from such relief. An action is frivolous if it "lacks an arguable basis either in law or in fact." *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

The court must “accept as true factual allegations in the complaint and all reasonable inferences that can be drawn therefrom.” *Nami v. Fauver*, 82 F.3d 63, 65 (3d Cir. 1996)(citing *Holder v. City of Allentown*, 987 F.2d 188, 194 (3d Cir. 1993)). Additionally, *pro se* complaints are held to “less stringent standards than formal pleadings drafted by lawyers” and can only be dismissed for failure to state a claim when “it appears ‘beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.’” *Haines v. Kerner*, 404 U.S. 519, 520-521 (1972)(quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

## II. ANALYSIS

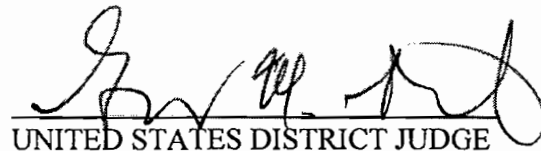
Whitfield alleges that he made a request to the Wilmington Police Department and the Delaware Attorney General’s Office to investigate a complaint he made against Detective Stephan Misetic (“Misetic”). Whitfield alleges that in October 2002 Misetic “made up” information to justify his arrest and further that Misetic “lied” in an affidavit to support a finding of probable cause for an arrest warrant. Whitfield alleges that when he requested an investigation in May 2006, he was told that because three years had passed, no investigation would take place on his complaint that Misetic had lied in the affidavit of probable because it did not “fall under special circumstances.”

As discussed, one of the named defendants is the Delaware Attorney General’s Office. The office of the Delaware Attorney General falls under the umbrella of the Delaware Department of Justice. The Eleventh Amendment proscribes any suit against a state, or against a state agency or department or state official where “the state is the real, substantial party in interest,” unless the state consents to suit. *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 100-101 (1984); see *MCI Telecom. Corp v. Bell Atlantic of Penn.*, 271 F3d 491 (3d Cir.

2001) (states are generally immune from private suits in federal court). The Eleventh Amendment is a “jurisdictional bar which deprives federal courts of subject matter jurisdiction.” *Blanciak v. Allegheny Ludlum Corp.*, 77 F.3d 690, 694 (3d Cir.1996) (citing *Pennhurst State School & Hosp. v. Halderman*, 465 U.S. 89, 98-100 (1984)). Because the Delaware Department of Justice is a duly constituted state agency whose Eleventh Amendment immunity has not been waived, it is immune from suit. Accordingly, the court will dismiss Whitfield’s claims against the Office of the Attorney General for the State of Delaware.

### III. CONCLUSION

Based upon the foregoing analysis, the claim against the defendant the Delaware Attorney General’s Office is dismissed without prejudice pursuant to 28 U.S.C. § 1915(e)(2)(B) and § 1915A(b)(1) as it is immune from suit. Whitfield may proceed with his remaining claims against the Wilmington Police Department. An appropriate order will be entered.



UNITED STATES DISTRICT JUDGE

November 16, 2006  
Wilmington, Delaware

000012

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MUSTAFA A. WHITFIELD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civ. No. 06-541-GMS
	)	
WILMINGTON POLICE DEPARTMENT	)	
and DELAWARE ATTORNEY	)	
GENERAL'S OFFICE	)	
	)	
Defendants.	)	

**ORDER**

At Wilmington this 16<sup>th</sup> day of November, 2006, for the reasons set forth in the

Memorandum issued this date, IT IS HEREBY ORDERED that:

1. The claim against the defendant Delaware Attorney General's Office is DISMISSED without prejudice as it is immune from suit pursuant to 28 U.S.C. § 1915(e)(2)(B) and 28 U.S.C. § 1915A(b)(1).

2. The court has identified a cognizable claim within the meaning of 28 U.S.C. § 1915 and § 1915A(b) against the defendant Wilmington Police Department. Whitfield is allowed to proceed against this defendant.

IT IS FURTHER ORDERED that:

1. The clerk of the court shall cause a copy of this order to be mailed to the plaintiff.

2. Pursuant to Fed. R. Civ. P. 4(c)(2), 4(i) and (j), Whitfield shall complete and return to the Clerk of the Court an **original "U.S. Marshal-285" form for the remaining defendant, the Wilmington Police Department**, as well as for the **chief executive officer for**

**the City of Wilmington, Delaware.** Whitfield shall provide the court with one copy of the complaint (D.I. 2) for service upon the remaining defendant. **Whitfield is notified that the United States Marshal will not serve the complaint until all "U.S. Marshal 285" forms have been received by the clerk of the court. Failure to provide the "U.S. Marshal 285" forms for the remaining defendant and the chief executive officer for the City of Wilmington, Delaware within 120 days of this order may result in the complaint being dismissed or defendants being dismissed pursuant to Federal Rule of Civil Procedure 4(m).**

3. Upon receipt of the completed "U.S. Marshal 285" form(s) as required by paragraph 2 above, the United States Marshal shall serve a copy of the complaint (D.I. 2), this order, a "Notice of Lawsuit" form, the filing fee order(s), and a "Return of Waiver" form upon the defendant(s) identified in the 285 forms.

4. Within **thirty (30) days** from the date that the "Notice of Lawsuit" and "Return of Waiver" forms are sent, if an executed "Waiver of Service of Summons" form has not been received from a defendant, the United States Marshal shall personally serve said defendant(s) pursuant to Fed. R. Civ. P. 4(c)(2) and said defendant(s) shall be required to bear the cost related to such service, unless good cause is shown for failure to sign and return the waiver.

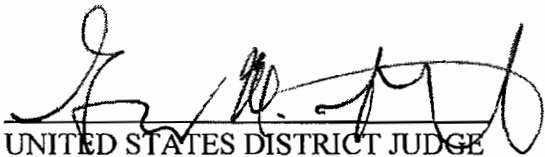
5. Pursuant to Fed. R. Civ. P. 4(d)(3), a defendant who, before being served with process timely returns a waiver as requested, is required to answer or otherwise respond to the complaint within **sixty (60) days** from the date upon which the complaint, this order, the "Notice of Lawsuit" form, and the "Return of Waiver" form are sent. If a defendant responds by way of a motion, said motion shall be accompanied by a brief or a memorandum of points and authorities and any supporting affidavits.

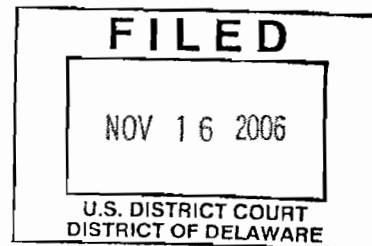


6. No communication, including pleadings, briefs, statement of position, etc., will be considered by the court in this civil action unless the documents reflect proof of service upon the parties or their counsel.

7. **NOTE: \*\*\*** When an amended complaint is filed prior to service, the court will **VACATE** all previous service orders entered, and service **will not take place**. An amended complaint filed prior to service shall be subject to re-screening pursuant to 28 U.S.C. §1915(e)(2) and § 1915A(a). **\*\*\***

8. **NOTE: \*\*\*** Discovery motions and motions for appointment of counsel filed prior to service will be dismissed without prejudice, with leave to refile following service. **\*\*\***

  
UNITED STATES DISTRICT JUDGE



SUPERIOR COURT CRIMINAL DOCKET  
( as of 12/21/2006 )

Page 1

State of Delaware v. MUSTAFE WHITFIELD DOB: 05/10/1985  
 State's Atty: MARTIN B O'CONNOR , Esq. AKA: MUSTAFA A WHITFIELD  
 Defense Atty: JOSEPH M BERNSTEIN , Esq. MUSTAFA A WHITFIELD

Co-Defendants: AKEEM COLEMAN , EMMANUEL ROBINSON

Assigned Judge:

## Charges:

Count	DUC#	Crim.Action#	Description	Dispo.	Dispo. Date
001	0210009174	N03010734	ATT CARJACKING	DISM	05/20/2003
002	0210009174	IN03010735R1	ASLT 2ND	GLTY	02/06/2004
003	0210009174	IN03010736R1	DISGUISE	GLTY	02/06/2004
004	0210009174	IN03010737R1	CONSP 2ND	GLTY	02/06/2004
005	0210009174	IN03012167R1	ATT. FELONY B	GLTY	02/06/2004
006	0210009174	IN03012168	PFDCF	NG	02/06/2004
007	0210009174	IN03012169R1	PFDCF	GLTY	02/06/2004
008	0210009174	IN03012170R1	RECK END 1ST	GLTY	02/06/2004
009	0210009174	IN03012171R1	PFDCF	GLTY	02/06/2004
010	0210009174	IN03012172	PDWB JUVENILE	NG	02/06/2004
011	0210009174	IN03012173	POSS DRUG PARAP	NOLP	08/14/2003
012	0210009174	IN03010738	TRF.COC.5-50G	NOLP	08/14/2003
013	0210009174	IN03010739	PWITD NSI CS	NOLP	08/14/2003
014	0210009174	IN03010740	PWITD NSII CS	NOLP	08/14/2003
015	0210009174	IN03010741	MAINT DWELLING	NOLP	08/14/2003

No.	Event Date	Event	Judge
1	01/14/2003	CASE ACCEPTED IN SUPERIOR COURT. ARREST DATE: 10/15/2002 PRELIMINARY HEARING DATE: WAVIED AT FAMILY COURT 12/19/03 BAIL: CASH BAIL 62,000.00	
2	02/10/2003	INDICTMENT, TRUE BILL FILED.NO 19 SCHEDULED FOR ARRAIGNMENT AND BAIL REPRESENTATION 02/25/03 AT 9:30 CASE REVIEW 03/24/03 AT 9:00	
3	02/10/2003	CASE CONSOLIDATED WITH:0210013334	
4	02/10/2003	MEMORANDUM FILED, CONSOLIDATION FORM FAXED TO NCC DENTENTION CENTER.	
5	02/28/2003	CONFLICT LETTER FILED BY WENDY RUEBECK.	
6	03/05/2003	SUMMONS MAILED.	
	03/14/2003		REYNOLDS MICHAEL P.

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SUPERIOR COURT CRIMINAL DOCKET  
( as of 12/21/2006 )

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State of Delaware v. MUSTAFE WHITFIELD DOB: 05/10/1985  
 State's Atty: MARTIN B O'CONNOR , Esq. AKA: MUSTAFA A WHITFIELD  
 Defense Atty: JOSEPH M BERNSTEIN , Esq. MUSTAFA A WHITFIELD

No.	Event Date	Event	Judge
		BAIL MODIFIED. BAIL NOW SET AT CASH BAIL 62,000.00 100% You are ordered to have no contact, direct or indirect ANTHONY MEEK (hereinafter the "Alleged Victim"), or with the alleged vict residence, place of employment, school, church, or at any ot No direct or indirect contact means that you are not to physical presence of the alleged victim. Also, you cannot s messages or notes to the alleged victim by mail, other perso You cannot send messages to, or communicate with, the allege telephone, or other electronic medium. You cannot send pres any other object to the alleged victim. You are not to cont victim in ANY way. It is a violation of this order if you h except your attorney, contact the alleged victim for you. --- You are to make no attempts to locate the alleged victi ---	
7	03/14/2003	ARRAIGNMENT CALENDAR, ARRAIGNED.	REYNOLDS MICHAEL P.
8	03/14/2003	ORDER: JOSEPH BERNSTEIN, ESQ. APPOINTED TO REPRESENT DEFENDANT.	REYNOLDS MICHAEL P.
	03/24/2003	CASE REVIEW CALENDAR: SET FOR FINAL CASE REVIEW 4/21/03 @ 1:45	TOLIVER CHARLES H. IV
9	04/10/2003	MOTION TO TRANSFER DETENTION OF DEFENDANT FROM NEW CASTLE COUNTY DETENTION CENTER TO GANDER HILL. (CHRISTINA SHOWALTER, DAG.)	
10	04/15/2003	MOTION FOR TRANSFER GRANTED. DEFENDANT TO BE TRANSFERRED FROM NEW CASTLE COUNTY DETENTION CENTER TO GANDER HILL.	
11	04/21/2003	CASE REVIEW CALENDAR FINAL CASE REVIEW CONTINUED. DEFENDANT'S REQUEST-DEFENSE ATTY IN TRIAL.	BABIARZ JOHN E. JR.
12	05/08/2003	MOTION FOR REDUCTION OF BAIL FILED. BY JOSEPH BERNSTEIN, ESQ SCHEDULED FOR 5/20/03 AT 9:30.	
	05/19/2003	FINAL CASE REVIEW: NO PLEA/SET FOR TRIAL	JURDEN JAN R.
13	05/19/2003	ORDER SCHEDULING TRIAL FILED. TRIAL DATE: __7/22/03	

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SUPERIOR COURT CRIMINAL DOCKET  
( as of 12/21/2006 )

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State of Delaware v. MUSTAFE WHITFIELD DOB: 05/10/1985  
 State's Atty: MARTIN B O'CONNOR , Esq. AKA: MUSTAFA A WHITFIELD  
 Defense Atty: JOSEPH M BERNSTEIN , Esq. MUSTAFA A WHITFIELD

No.	Event Date	Event	Judge
		CASE CATEGORY: <u>1</u> ASSIGNED JUDGE (CATEGORY 1 CASES ONLY): RRC UNLESS THE COURT IS ADVISED WITHIN 2 WEEKS OF THE UNAVAILABILITY OF NECESSARY WITNESSES, THE COURT WILL CONSIDER THE MATTER READY FOR TRIAL. ABSENT EXCEPTIONAL CIRCUMSTANCES, RESCHEDULING OR CONTINUANCE REQUESTS WILL BE DENIED.	
14	05/20/2003	MOTION FOR REDUCTION OF BAIL GRANTED. BAIL SET IN THE AMOUNT OF SECURED BAIL-HELD 107,000.00 100%	VAVALA MARK STEPHEN
15	06/12/2003	MOTION TO SUPPRESS FILED J BERNSTEIN	
16	06/12/2003	MOTION FOR SEVERANCE OF CHARGES FILED BY J BERNSTEIN	
17	06/12/2003	LETTER FROM J BERNSTEIN TO JUDGE COOCH RE: MOTIONS FILES WITH THE COURT TO BE HEARD PRIOR TO TRIAL	
18	06/13/2003	ORDER: 1. DEFENDANT'S MOTION TO SUPPRESS HAS BEEN SCHEDULED FOR A HEARING ON FRIDAY, JULY 18TH 2002 AT 10:00AM 2. THE STATE SHALL FILE A RESPONSE TO THE MOTION ON OR BEFORE JULY 11, 2003 WHICH SETS FORTH FACTS AND LEGAL AUTHORITIES RELIED UPON BY THE STATE IN OPPOSITION TO THE MOTION. THE STATE SHALL ALSO ADVISE THE COURT OF THE STATUS OF ANY PLEA NEGOTIONS BY JULY 11, 2003. SEE FULL ORDER IN FILE IT IS SO ORDERED.	DEL PESCO SUSAN C.
30	06/18/2003	LETTER FROM: JUDGE COOCH TO: MARTIN O'CONNOR, ESQ. & JOSEPH BERNSTEIN, ESQ. RE: DEFENDANT HAS FILED A MOTION FOR SEVERANCE OF CHARGES. THE STATE SHALL FILE A RESPONSE TO THE MOTION ON OR BEFORE JUNE 27, 2003. I WILL HEAR THE MOTION (IN CHAMBERS) ON WEDNESDAY, JULY 9 AT 9:00AM (IF THIS DATE IS NOT CONVENIENT TO COUNSEL, PLEASE ADVISE MY SECRETARY IMMEDIATELY). MS. BRENHOCH ADVISES ME THAT DEFENDANT'S NEWLY FILED MOTION FOR SUPPRESSION WILL BE SEPARATELY SCHEDULED BY HER AND HEARD POTENTIALLY BY ANOTHER JUDGE. TRIAL IS SCHEDULED FOR JULY 22, 2003.	COOCH RICHARD R.
20	06/23/2003	COPY OF LETTER FROM JOSEPH BERNSTEIN, ESQ. TO JUDGE COOCH RE: THE ABOVE CASE IS A CATEGORY #1 CASE THAT IS ASSIGNED TO YOUR HONOR. ENCLOSED ARE COPIES OF THE FOLLOWING MOTIONS WHICH HAVE BEEN FILED WITH THE COURT: 1. MOTION FOR SUPPRESSION OF EVIDENCE;	COOCH RICHARD R.

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SUPERIOR COURT CRIMINAL DOCKET  
( as of 12/21/2006 )

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State of Delaware v. MUSTAFE WHITFIELD DOB: 05/10/1985  
 State's Atty: MARTIN B O'CONNOR , Esq. AKA: MUSTAFA A WHITFIELD  
 Defense Atty: JOSEPH M BERNSTEIN , Esq. MUSTAFA A WHITFIELD

No.	Event Date	Event	Judge
		2. MOTION FOR SEVERANCE OF CHARGES TRIAL IS SCHEDULED ON JULY 22, 2003. LEAVE WAS GRANTED BY THE COURT AT FINAL CASE REVIEW ON MAY 19, 2003 TO FILE THESE MOTIONS OUT OF TIME.	
74	06/27/2003	LETTER FROM: MARTIN B. O'CONNER, DAG. TO: JUDGE COOCH. RE: THE STATE HAS HAD AN OPPORTUNITY TO REVIEW THE ABOVE DEFENDANT'S MOTION FOR SEVERANCE OF CHARGES. BY LETTER DIRECTIVE OF THIS COURT, THE STATE WAS TO RESPOND BY JUNE 27, 2003 TO THE DEFENDANT'S MOTION. (SEE LETTER IN FILE).	
19	06/30/2003	SUBPOENA(S) MAILED.	
25	07/01/2003	LETTER FROM M. O'CONNOR TO JOH RE: STATE'S REQUESTING THE TRIALS BE CONTINUED AND THAT THE COURT SET A SCHEDULING CONFERENCE TO ASSIGN A NEW TRIAL DATE	
21	07/03/2003	THE STATE IS REQUESTING THAT THE ABOVE REFERENCE TRIALS BE CONTINUED, AND THAT THE COURT SET A SCHEDULING CONFERENCE TO ASSIGN A NEW TRIAL DATE. FILED BY MARTIN B. O'CONNOR, DAG FILED ON 0210009174, 0210008663, 0210009188	
24	07/03/2003	LETTER FROM M. O'CONNOR TO RRC RE: COURT REQUESTED THE STATE TO NOTIFY IT AS TO WHAT SET OF CHARGES WILL BE TRIED FIRST. STATE REQUESTED A CONTINUANCE ON 6/27/03 IN THE SHOOTING CASE. IF GRANTED THE STATE WILL BE CONTENT TO GO FORWARD WITH THE NARCOTICS CHARGES	
28	07/03/2003	COPY OF LETTER FROM JOSEPH BERNSTEIN, ESQ. TO JUDGE COOCH RE: I RECENTLY RECEIVED THE ENCLOSED ORDER DATED JULY 7, 2003 WHICH INDICATES THAT THE SUPPRESSION HEARING IS SCHEDULED ON AUGUST 15, 2003. THIS CONFLICTS WITH INFORMATION I PREVIOUSLY RECEIVED THAT THE SUPPRESSION HEARING WAS SCHEDULED ON JULY 18, 2003 WITH JUDGE DELPESCO PLEASE CLARIFY THIS CONFLICT. IN ANY EVENT, I WILL PROVIDE THE COURT WITH AN AMENDED MOTION IN ACCORDANCE WITH THE ORDER DATED JULY 7, 2003 TO BE FILED ON OR BEFORE JULY 16, 2003.	COOCH RICHARD R.
22	07/07/2003	SUBPOENA(S) MAILED.	
27	07/07/2003	ORDER: CONCERNING SCHEDULED & DEADLINES FOR COUNSEL TO FILE RESPONSE *****ORDER VACATED 07/10/03	COOCH RICHARD R.
23	07/09/2003		

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SUPERIOR COURT CRIMINAL DOCKET  
( as of 12/21/2006 )

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State of Delaware v. MUSTAFE WHITFIELD DOB: 05/10/1985  
 State's Atty: MARTIN B O'CONNOR , Esq. AKA: MUSTAFA A WHITFIELD  
 Defense Atty: JOSEPH M BERNSTEIN , Esq. MUSTAFA A WHITFIELD

No.	Event Date	Event	Judge
		HEARING, MOTION FOR SEVERANCE. THE MOTION WAS PREVIOUSLY GRANTED PER JUDGE COOCH.	
39	07/10/2003	EMAIL FILED TO:MARTIN O'CONNOR, ESQ. FROM JUDGE COOCH RE: THE SUPPRESSION HEARING WILL BE HELD FRIDAY, JULY 18TH AT 10 AM BEFORE JUDGE SLIGHTS. DEFENDANT SHALL FILE AN AMENDED MOTION TO SUPPRESS BY 5 PM ON JULY 14. STATE SHALL FILE RESPONSE BY NOON ON JULY 17TH.	
26	07/14/2003	AMENDED MOTION TO SUPPRESS FILED	
29	07/15/2003	ORDER: 1. TRIAL DATE OF 07/22/03 IS CONTINUED TILL 10/03 PER STATE'S REQUEST 2. STATE TO COMPLETE DNA TESTING BY 10/03/03 3. CASE TO BE REASSIGNED TO ANY JUDGE IN THE CRIMINAL ROTATION 4. NO DEFENSE OBJECTI ON TO CONTINUANCE. COURT SUGGESTED TO THE DAG THAT BECAUSE OF HIS AND DEFENSE COUNSEL'S CAPITAL CASE SCHEDULES, THE STATE MAY HAVE TO ARRANG E FOR A POSSIBLE PICK-UP.	HERLIHY JEROME O.
32	07/16/2003	LETTER FROM M. O'CONNOR TO JRS. RE: STATE'S RESPONSE TO DEFT'S MOTION	
31	07/18/2003	TRIAL CALENDAR/SUPPRESSION HEARING: MOTION GRANTED DRUG CHARGES TO BE DROPPED	SLIGHTS JOSEPH R. III
33	07/25/2003	ORDER SCHEDULING TRIAL FILED. TRIAL DATE: 10/15/03 CASE CATEGORY: #1 ASSIGNED JUDGE (CATEGORY 1 CASES ONLY): HLA UNLESS THE COURT IS ADVISED WITHIN 2 WEEKS OF THE UNAVAILABILITY OF NECESSARY WITNESSES, THE COURT WILL CONSIDER THE MATTER READY FOR TRIAL. ABSENT EXCEPTIONAL CIRCUMSTANCES, RESCHEDULING OR CONTINUANCE REQUESTS WILL BE DENIED.	
34	08/01/2003	MOTION FOR REDUCTION OF BAIL FILED. BY JOSEPH BERNSTEIN, ESQ. SCHEDULED FOR 08/12/03 9:30AM	
35	08/12/2003	MOTION FOR REDUCTION OF BAIL GRANTED. BAIL SET IN THE AMOUNT OF SECURED BAIL-HELD	REYNOLDS MICHAEL P.
36	08/13/2003	CASE REVIEW PLEA HEARING: SET FOR TRIAL	88,000.00 100%

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SUPERIOR COURT CRIMINAL DOCKET  
( as of 12/21/2006 )

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State of Delaware v. MUSTAFE WHITFIELD DOB: 05/10/1985  
 State's Atty: MARTIN B O'CONNOR , Esq. AKA: MUSTAFA A WHITFIELD  
 Defense Atty: JOSEPH M BERNSTEIN , Esq. MUSTAFA A WHITFIELD

No.	Event Date	Event	Judge
37	08/14/2003	EMAIL FILED TO: MARTIN O'CONNOR (DAG) FROM: C. LEMIEUX RE: INCORRECT CASE NUMBER ON NOLLE PROSEQUI. PERMISSION GRANTED TO CHANGE THE CASE NUMBER.	
38	08/15/2003	NOLLE PROSEQUI FILED BY ATTORNEY GENERAL. AS TO: IN03-01-0738, 0739, 0740, 0741 & 2173 REASON: (20) EVIDENCE SUPRESSED	
40	09/29/2003	SUBPOENA(S) MAILED.	
	10/09/2003	TRIAL CALENDAR-JURY TRIAL-CONTINUED. PROSECUTION REQUEST. DAG IN TRIAL OFFICE CONFERENCE TO BE SCHEDULED PER RSG. *APPROVED BY RSG ON 10/09/03 TRIAL IS SCHEDULED FOR 10/15/03.	GEBELEIN RICHARD S.
41	11/07/2003	ORDER SCHEDULING TRIAL FILED. TRIAL DATE: TRIAL IS SCHEDULED FOR THURSDAY, 01/29/2004. CASE CATEGORY: THIS MATTER IS A CATEGORY # 1 CASE. ASSIGNED JUDGE (CATEGORY 1 CASES ONLY): TO JUDGE JOESPH R. SLIGHTS III. UNLESS THE COURT IS ADVISED WITHIN 2 WEEKS OF THE UNAVAILABILITY OF NECESSARY WITNESSES, THE COURT WILL CONSIDER THE MATTER READY FOR TRIAL. ABSENT EXCEPTIONAL CIRCUMSTANCES, RESCHEDULING OR CONTINUANCE REQUESTS WILL BE DENIED.	
44	11/26/2003	DEFENDANT'S LETTER FILED.	
42	12/15/2003	DEFENDANT'S LETTER FILED. TO: JUDGE SLIGHTS	
43	12/19/2003	LETTER FROM JUDGE SLIGHTS TO JOSEPH BERNSTEIN, ESQ. RE: SUPERIOR COURT CRIMINAL RULE 47 PROVIDES IN PERTINENT PART, THE COURT WILL NOT CONSIDER PRO SE APPLICATIONS BY DEFENDANTS WHO ARE REPRESENTED BY COUNSEL. PLEASE NOTIFY YOUR CLIENT THAT FURTHER CORRESPONDENCE OR MOTIONS SHOULD BE MAILED DIRECTLY TO YOUR OFFICE FOR APPROPRIATE ACTION.	SLIGHTS JOSEPH R. III
46	12/30/2003	DEFENDANT'S LETTER FILED.	
45	01/05/2004	SUBPOENA(S) MAILED.	
47	01/29/2004	TRIAL CALENDAR- WENT TO TRIAL JURY	DEL PESCO SUSAN C.
48	01/29/2004		

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SUPERIOR COURT CRIMINAL DOCKET  
( as of 12/21/2006 )

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State of Delaware v. MUSTAFE WHITFIELD  
 State's Atty: MARTIN B O'CONNOR , Esq.  
 Defense Atty: JOSEPH M BERNSTEIN , Esq.

DOB: 05/10/1985  
 AKA: MUSTAFA A WHITFIELD  
 MUSTAFA A WHITFIELD

No.	Event Date	Event	Judge
		SUBPOENA(S) SERVED BY SHERIFF.	
49	02/03/2004	MOTION FOR JUDGEMENT OF ACQUITTAL FILED. FILED BY JOSEPH BERNSTEIN, ESQ SENT UP TO JURY TRIAL JUDGE DEL PESCO	
50	02/06/2004	CHARGE TO THE JURY FILED.	DEL PESCO SUSAN C.
51	02/06/2004	JURY TRIAL HELD. JURY SELECTED AND SWORN 1/29/04. ON 2/06/04 JURY FOUND DEFENDANT GUILTY OF (2167) ATT. ROB. 1ST; (0735) ASSAULT 2ND; (2169) PFD CF; (2170) REC. END. 1ST; (2171) WEARING DISGUISE DURING COM. FELONY; (0737) CONSP. 2ND. JURY FOUND DEFENDANT NOT GUILTY OF (2168) PFD CF AND (2172) PDWBPP. DEFENDANT REPRESENTED BY JOSEPH BERNSTEIN, ESQ. ATTORNEYS FOR STATE, MARTIN O'CONNOR, ESQ. AND JOHN DONAHUE, ESQ. PSI ORDERED. SENTENCING DATE TO BE DETERMINED. ALL EXHIBITS RETAINED BY PROTH. DEPT. CR/BAIRD/GARRI/HONAKER CC/SHERR/BENNETT	DEL PESCO SUSAN C.
54	02/10/2004	MOTION TO AUTHORIZE PAYMENT FOR TRANSCRIPTS FILED. FILED BY JOSEPH M BERNSTEIN, ESQ	
53	02/11/2004	TRANSCRIPT FILED. VERDICT-FEBRUARY 6, 2004 BEFORE: HONORABLE SUSAN C. DEL PESCO AND JURY (ORIGINAL TRANSCRIPT IN CASE # 0210008663)	<i>only from court report</i>
52	02/12/2004	MOTION AND ORDER TO AUTHORIZE PAYMENT FOR TRANSCRIPTS: IT IS ORDERED THAT THE COST OF PREPARATION OF THE TRIAL TRANSCRIPTS IN THE ABOVE ACTION BE BORNE BY THE STATE, IN LIGHT OF THE INDIGENCY OF THE DEFENDANT.	DEL PESCO SUSAN C.
55	02/17/2004	MOTION FOR NEW TRIAL FILED. BY JOSEPH M BERNSTEIN, ESQ REFERRED TO ISO FOR TRIAL JUDGE DEL PESCO (02/18)	
60	03/03/2004	LETTER FROM: MARTIN O'CONNER AND JOHN DONAHUE, DAG. TO: JUDGE DELPESCO. LETTER MEMORANDUM AS THE STATE'S RESPONSE TO THE ABOVE REFERENCED DEFENDANT'S MOTION FOR NEW TRIAL. THE STATE SUBMITS THAT THE DEFTS. MOTION FOR A NEW TRIAL BE DENIED. *SEE FULL LETTER IN FILE*	
56	03/05/2004		DEL PESCO SUSAN C.

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SUPERIOR COURT CRIMINAL DOCKET  
( as of 12/21/2006 )

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State of Delaware v. MUSTAFE WHITFIELD DOB: 05/10/1985  
 State's Atty: MARTIN B O'CONNOR , Esq. AKA: MUSTAFA A WHITFIELD  
 Defense Atty: JOSEPH M BERNSTEIN , Esq. MUSTAFA A WHITFIELD

No.	Event Date	Event	Judge
		HEARING HELD: MOTION FOR A NEW TRIAL BEFORE JUDGE DEL PESCO. DEFENSE ATTORNEY JOSEPH BERNSTEIN GAVE ARGUMENT FOR A NEW TRIAL, DUE TO THE WAY THE VERDICT CAME BACK, DEFENSE ATTORNEYS, JAMES BAYARD AND KEVIN O'CONNELL AGREES WITH ATTORNEY JOSEPH BERNSTEIN ARGUMENT. JUDGE DEL PESCO, STATED THAT A MOTION FOR A NEW TRIAL IS DENIED AND THAT THE STATE HAD VERY STRONG EVIDENCES AND NO REASON TO BELIEVE THAT THE JURORS WAS TRADING VOTES.	
57	03/05/2004	ORDER: MOTION FOR JUDGEMENT OF ACQUITTAL: DENIED.	DEL PESCO SUSAN C.
65	03/11/2004	LETTER FROM: MARTIN O'CONNOR AND JOHN DONAHUE, DAG. TO: JUDGE DEL PESCO. PLEASE ACCEPPT THIS LETTER MEMORANDUM AS THE STATE'S RESPONSE TO THE ABOVE REFERENCED DEFT. MUSTAFA WHITFIELD'S MOTION FOR A NEW TRIAL FILED ON OR ABOUT FEBRUARY 2, 2003. IT APPEAR THAT THE MOTION IS BASED ON AN ARGUMENT THAT THE COURT'S ALLEN CHARGE PRODUCED A COMPROMISE VERDICT. AS IS DISCUSSED IN THIS MEMORANDUM, DEFENDANTS ARE IN FACT NOT ENTITLED TO A NEW TRIAL, AND THE COURT SHOULD DENY THE MOTION. *SEE FULL LETTER IN FILE*	
58	03/18/2004	LETTER FROM SUPREME COURT TO JOSEPH BERNSTEIN, ESQ. RE: CONTINUING OBLIGATION.	
59	04/05/2004	MOTION FOR TRANSCRIPT FILED PRO SE. REFERRED TO JUDGE DEL PESCO.	
61	04/05/2004	AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS FILED PRO SE. REFERRED TO JUDGE DEL PESCO	
62	04/08/2004	LETTER FROM: JUDGE DEL PESCO YOU CONTINUE TO FILE NUMEROUS PAPERS IN THIS COURT EVEN THOUGH YOU ARE REPRESENTED BY COUNSEL. IT IS A WASTE OF THE TIME OF THE COURT TO PROCESS YOUR PAPERS. A PERFECT EXAMPLE IS THE FACT THAT YOU FILED A MOTION TO PROCEED IN FORMA PAUPERIS AND A MOTION FOR A TRANSCRIPT WHEN I PREVIOUSLY SIGNED AN ORDER AUTHORIZING THE TRANSCRIPT IN RESPONSE TO A MOTION FILED BY MR. BERNSTEIN ON FEBRUARY 9, 2004. YOU ARE DIRECTED TO CEASE FILING PAPERS IN THIS COURT. PAPERS MUST BE FILED BY YOUR ATTORNEY.	DEL PESCO SUSAN C. TO: MR WHITFIELD
63	04/16/2004	SENTENCING CALENDAR: DEFENDANT SENTENCED.	DEL PESCO SUSAN C.
68	04/16/2004	CORRECTED ASOP ORDER SIGNED AND FILED. CORRECTION TO REFLECT	DEL PESCO SUSAN C.

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SUPERIOR COURT CRIMINAL DOCKET  
( as of 12/21/2006 )

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State of Delaware v. MUSTAFE WHITFIELD DOB: 05/10/1985  
 State's Atty: MARTIN B O'CONNOR , Esq. AKA: MUSTAFA A WHITFIELD  
 Defense Atty: JOSEPH M BERNSTEIN , Esq. MUSTAFA A WHITFIELD

No.	Event Date	Event	Judge
		\$50.00 ATTORNEY FEE.	
64	04/21/2004	SENTENCE: ASOP ORDER SIGNED & FILED 4/21/04.	DEL PESCO SUSAN C.
66	05/10/2004	MANDATE FILED FROM SUPREME COURT: APPEAL DISMISSED. SUPREME COURT CASE NO: 96, 2004 SUBMITTED: MARCH 26, 2004 DECIDED: APRIL 20, 2004 BEFORE HOLLAND, STEELE AND JACOBS, JUSTICES. *PURSUANT TO SUPREME COURT RULE 29(B) THE WITHIN APPEAL IS DISMISSED	
67	06/29/2004	LETTER FROM SUPREME COURT TO MICHELE HONAKER, COURT REPORTER RE: AN EXTENSION TO FILE THE TRANSCRIPT IS GRANTED, THE TRANSCRIPT IS NOW DUE JULY 22, 2004. 156, 2004	
	07/20/2004	RECORDS SENT TO SUPREME COURT.	
69	07/22/2004	TRANSCRIPT FILED. TRIAL TRANSCRIPT - JANUARY 30, 2004 BEFORE JUDGE DEL PESCO	
70	07/22/2004	TRANSCRIPT FILED. TRIAL TRANSCRIPT - JANUARY 29, 2004 BEFORE JUDGE DEL PESCO	
71	07/22/2004	TRANSCRIPT FILED. TRIAL TRANSCRIPT - FEBRUARY 3, 2004 BEFORE JUDGE DEL PESCO	
72	07/22/2004	TRANSCRIPT FILED. TRIAL TRANSCRIPT - FEBRUARY 6, 2004 BEFORE JUDGE DEL PESCO	
73	07/22/2004	TRANSCRIPT FILED. VERDICT - FEBRUARY 6, 2004 BEFORE JUDGE DEL PESCO	
79	07/22/2004	LETTER FROM JUDY F. GOFF YOUR LETTER ADDRESSED TO JUDGE T. HENLEY GRAVES WAS FORWARDED TO SUSSEX COUNTY SUPERIOR COURT, WHERE JUDGE GRAVES PRESIDES. YOUR CASE IS A NEW CASTLE COUNTY SUPERIOR COURT CASE, AND YOU WERE	TO MUSTAFA WHITFIELD

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SUPERIOR COURT CRIMINAL DOCKET  
( as of 12/21/2006 )

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State of Delaware v. MUSTAFE WHITFIELD  
 State's Atty: MARTIN B O'CONNOR , Esq.  
 Defense Atty: JOSEPH M BERNSTEIN , Esq.

DOB: 05/10/1985  
 AKA: MUSTAFA A WHITFIELD  
 MUSTAFA A WHITFIELD

No.	Event Date	Event	Judge
		SENTENCED BY JUDGE SUSAN C. DELPESCO. THEREFORE, YOUR CORRESPONDENCE IS BEING FORWARDED TO NEW CASTLE COUNTY FOR ANY ACTION DEEMED NECESSARY.	
76	07/29/2004	LETTER FROM SUPREME COURT TO SHARON AGNEW, PROTHONOTARY RE: TRANSCRIPT AND RECORD ARE DUE 08/02/04. 174, 2004 (ALSO WHITFIELD 156, 2004 AND COLEMAN 208, 2004)	
75	07/30/2004	LETTER FROM SUPREME COURT TO SHARON AGNEW, PROTHONOTARY RE: TRANSCRIPT AND RECORD DUE AUGUST 2, 2004 156, 2004 (ALSO ROBINSON 174, 2004 AND COLEMAN 208, 2004)	
	07/30/2004	RECORDS SENT TO SUPREME COURT.	
77	08/02/2004	DEL PESCO SUSAN C. LETTER FROM JUDY GOFF, SECRETARY TO JUDGE T. HENLEY GRAVES TO DEFENDANT RE: YOUR LETTER ADDRESSED TO JUDGE T. HENLEY GRAVES WAS FORWARDED TO SUSSEX COUNTY SUPERIOR COURT, WHERE JUDGE GRAVES PRESIDES. YOUR CASE IS A NEW CASTLE COUNTY SUPERIOR CASE, AND YOU WERE SENTENCED BY JUDGE SUSAN C. DEL PESCO. THEREFORE, YOUR CORRESPONDENCE IS BEING FORWARDED TO NEW CASTLE COUNTY FOR ANY ACTION DEEMED NECESSARY.	
78	08/03/2004	DEFENDANT'S LETTER FILED. LETTER REGARDING WHAT WAS DONE WRONG AT THE TRIAL. *SEE FULL LETTER IN FILE.	
80	08/06/2004	RECEIPT OF RECORD ACKNOWLEDGED BY SUPREME COURT	
81	10/06/2004	TRANSCRIPT FILED. TRIAL- FEBRUARY 6, 2004 BEFORE JUDGE DEL PESCO AND JURY	
82	10/07/2004	TRANSCRIPT FILED. TRIAL- FEBRUARY 6, 2004 BEFORE JUDGE DEL PESCO AND JURY	
83	10/14/2004	DEFENDANT'S REQUEST FILED. REQUEST FOR COMPLETE COPY OF TRANSCRIPT. FEBRUARY 3RD PORTION OF THE TRANSCRIPT NOT GIVEN. COPY OF LETTER REFERRED TO THE COURT REPORTERS	

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SUPERIOR COURT CRIMINAL DOCKET  
( as of 12/21/2006 )

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State of Delaware v. MUSTAFE WHITFIELD  
 State's Atty: MARTIN B O'CONNOR , Esq.  
 Defense Atty: JOSEPH M BERNSTEIN , Esq.

DOB: 05/10/1985  
 AKA: MUSTAFA A WHITFIELD  
 MUSTAFA A WHITFIELD

No.	Event Date	Event	Judge
		OFFICE.	
86	10/27/2004	PETITION FOR A WRIT OF HABEAS CORPUS FILED (PRO SE) REFERRED TO JUDGE DELPESCO. DATE REFERRED: 11/01/04 CIVIL CASE NO: 04M-10-083	
84	11/02/2004	DEFENDANT'S LETTER FILED, CONCERNING CASE.	
85	11/02/2004	REFERRAL MEMORANDUM. REFERRED TO JOSEPH BERNSTEIN, ESQ. BY JUDGE DELPESCO. REF.# 84	
87	11/03/2004	ORDER: HABEAS CORPUS PETITION 04M-10-083 IS DENIED. THIS 3RD DAY OF NOVEMBER, 2004, UPON REVIEW OF THE FOREGOING PETITION FOR A WRIT OF HABEAS CORPUS AND THE RECORD IN THIS CASE, IT IS THE DECISION OF THE COURT THAT THE PETITION IS HEREBY DENIED. PETITIONER IS LEGALLY DETAINED. PETITIONER FAILS TO STATE A CLAIM UPON WHICH SUCH A WRIT MAY BE ISSUED. THE RELIEF REQUESTED IS NOT PROPERLY GRANTED THROUGH A WRIT OF HABEAS CORPUS. IT IS SO ORDERED. SCD	
88	11/05/2004	MOTION TO COMPEL FILED PRO SE. REFERRED TO JUDGE DEL PESCO	
89	11/05/2004	PETITION FOR A WRIT OF HABEAS CORPUS FILED (PRO SE) REFERRED TO JUDGE DELPESCO. DATE REFERRED: 11/8/04 CIVIL CASE NO: 04M-11-028	
90	11/15/2004	MOTION TO COMPEL FILED PRO SE. REFERRED TO JUDGE DEL PESCO	
91	11/17/2004	DEL PESCO SUSAN C. ORDER: 1. DEFENDANT'S PETITION FOR HABEAS CORPUS 04M-11-028 IS DENIED AS FRIVILIOUS AND REPETATIVE; 2. DEFENDANT'S PRO SE MOTION TO COMPEL (FILED NOVEMBER 5, 2004) IS DENIED; AND 3. DEFENDANT IS HEREBY ENJOINED FROM FUTURE FILINGS PRO SE FILINGS IN THIS COURT PENDING THE DECISION OF THE SUPREME COURT APPEAL (NO. 156,2004). THE PROTHONOTARY IS DIRECTED TO REJECT ANY SUCH FILINGS. SO ORDERED THIS 17TH DAY OF NOVEMBER, 2004. SCD	
92	11/17/2004	DEFENDANT'S LETTER FILED CONCERNING CASE.	
93	01/06/2005	DEFENDANT'S LETTER FILED.	

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SUPERIOR COURT CRIMINAL DOCKET  
( as of 12/21/2006 )

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State of Delaware v. MUSTAFE WHITFIELD  
 State's Atty: MARTIN B O'CONNOR , Esq.  
 Defense Atty: JOSEPH M BERNSTEIN , Esq.

DOB: 05/10/1985  
 AKA: MUSTAFA A WHITFIELD  
 MUSTAFA A WHITFIELD

No.	Event Date	Event	Judge
		TO: JUDGE DEL PESCO LETTER REQUESTING AN EXPLAINATION FOR DENIAL OF PREVIOUSLY FILED MOTIONS.	
94	02/09/2005	MANDATE FILED FROM SUPREME COURT: SUPERIOR COURT JUDGMENT AFFIRMED. SUPREME COURT CASE NO: 156, 2004 SUBMITTED: NOVEMBER 17, 2004 DECIDED: DECEMBER 29, 2004 BEFORE HOLLAND, JACOBS AND RIDGELY, JUSTICES.	
95	03/08/2005	MOTION FOR POSTCONVICTION RELIEF FILED. PRO SE REFERRED TO JUDGE DELPESCO	
96	04/14/2005	DEFENDANT'S REQUEST FILED. REQUEST TO APPOINT ATTORNEY FOR RULE 61 MOTION.	
97	05/05/2005	MOTION TO COMPEL FILED PROSE. REFERRED TO JUDGE DELPESCO.	
98	05/13/2005	LETTER FROM MR. WHITFIELD TO MR. BERNSTEIN. RE: LETTER SENT TO BE ADDED TO SUPERIOR COURT DOCKET.	
99	06/27/2005	DEL PESCO SUSAN C. ORDER: MOTION FOR POSTCONVICTION RELIEF: SUMMARILY DISMISSED. IT IS SO ORDERED	
100	06/27/2005	DEL PESCO SUSAN C. ORDER: MOTION TO COMPEL: DENIED. NO BASIS FOR THE REQUEST WAS STATED. ADDITIONALLY, IT APPEARS THAT DEFENDANT HAS THE AFFADAVIT OF PROBABLE CAUSE AS A COPY WAS ATTACHED TO THE MOTION FOR POSTCONVICTION.	
101	07/26/2005	LETTER FROM SUPREME COURT TO SHARON AGNEW, PROTHONOTARY RE: A NOTICE OF APPEAL WAS FILED IN SUPREME COURT ON JULY 21, 2005. THE RECORD IS DUE AUGUST 15, 2005. 327, 2005	
102	08/22/2005	LETTER FROM SUPREME COURT TO L. JABLONSKI, CASE MANAGER RE: EXTENSION TO FILE RECORD HAS BEEN GRANTED. THE RECORD IS DUE 09/06/05. 327, 2005	
	09/01/2005	RECORDS SENT TO SUPREME COURT. 327, 2005	
103	09/06/2005	RECEIPT FROM SUPREME COURT ACKNOWLEDGING RECORD.	

000027

SUPERIOR COURT CRIMINAL DOCKET  
( as of 12/21/2006 )

Page 13

State of Delaware v. MUSTAFE WHITFIELD  
 State's Atty: MARTIN B O'CONNOR , Esq.  
 Defense Atty: JOSEPH M BERNSTEIN , Esq.

DOB: 05/10/1985  
 AKA: MUSTAFA A WHITFIELD  
 MUSTAFA A WHITFIELD

No.	Event Date	Event	Judge
		327, 2005	
104	01/12/2006	MANDATE FILED FROM SUPREME COURT: SUPERIOR COURT JUDGMENT AFFIRMED. SUPREME COURT CASE NO: 327, 2005 SUBMITTED: OCTOBER 7, 2005 DECIDED: DECEMBER 13, 2005 BEFORE STEELE, CHEIF JUSTICE, BERGER, AND RIDGELY, JUSTICES.	
105	11/21/2006	DEFENDANT'S REQUEST FILED. REFERRED TO JUDGE DEL PESCO REQUEST FOR ASSISTANCE OF COUNSEL TO FILE RULE 61 MOTION	
106	12/04/2006	LETTER/ORDER ISSUED BY JUDGE: DEL PESCO. RE: YOU HAVE WRITTEN TO ME REQUESTING THE APPOINTMENT OF COUNSEL TO ASSIST YOU IN POSTCONVICTION RELIEF. YOU HAVE NOT SHOWN GOOD CAUSE FOR SUCH A REQUEST AND I FIND NONE. YOUR REQUEST IS DENIED. IT IS SO ORDERED.	DEL PESCO SUSAN C.

\*\*\* END OF DOCKET LISTING AS OF 12/21/2006 \*\*\*  
 PRINTED BY: CSCKPRI

000028

#18

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE,

v.

MUSTAFA WHITFIELD

:  
:  
:  
:  
:

ID # 0210009174

ORDER

This 13th day of June, 2003, it appearing to the Court:

1. Defendant's motion to suppress has been scheduled for a hearing on Friday, July 18, 2003, at 10:00 a.m.
2. The State shall file a response to the motion on or before July 11, 2003, which sets forth facts and legal authorities relied upon by the State in opposition to the motion. A courtesy copy of the response shall be delivered to Chambers. Failure of the State to file a response by this date may result in the Court's deeming the motion unopposed. The State shall also advise the Court of the status of any plea negotiations by July 11, 2003.

IT IS SO ORDERED.

  
\_\_\_\_\_  
Judge Susan C. Del Pesco

Original to Prothonotary

xc: Martin B. O'Connor, Esquire, Deputy Attorney General (Fax 577-2496)  
Joseph Bernstein, Esquire (Fax 656-9836)  
Elizabeth Brenhoch, Criminal Case Manager, Prothonotary's Office



*This order is vacated. R.R. Cooch 7/10/03*

*27*

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE )  
 )  
 v. ) ID # 0210009174  
 )  
 MUSTAFA WHITFIELD )

**ORDER**

This 7th day of July, 2003 it appearing to the Court:

- 1) Defendant's June 10, 2003 Motion to Suppress has been scheduled for a hearing on Friday, August 15, 2003 at 10:00 a.m. before the undersigned judge.
- 2) Defendant's Motion is entirely devoid of legal authorities relied upon. Accordingly, Defendant shall file an Amended Motion to Suppress containing such legal authorities by July 16, 2003. Failure of Defendant to file such Amended Motion to Suppress by that date may be deemed withdrawal of the motion.

The State shall file a Response to the motion on or before July 30, 2003 which sets forth facts and legal authorities relied upon by the State in opposition to the motion. A courtesy copy of the Response shall be delivered to chambers. Failure of the State to file a Response by this date may result in the Court's deeming the motion unopposed. The State shall also advise the Court of the status of any settlement negotiations by July 30, 2003.

**IT IS SO ORDERED.**

*Richard R. Cooch*

Richard R. Cooch, Judge

Original to Prothonotary

cc: Martin B. O'Connor , Esquire, Deputy Attorney General (by facsimile)  
Joseph M. Bernstein , Esquire (by facsimile)  
~~Ms. Elizabeth Brenneke, Prothonotary's Office~~

000030

Court: Superior Court (New Castle)

Service Count: 1

Return Date: 1-29-04  
CA#0210009174

Court Date:

48

BRUCE L HUDSON, ESQ  
vs.  
MUSTAFA WHITFIELD

Return of Service to be made by: / /  
Return of Service Mailed on: 1/29/04

Received Date:

Prepared by: T Lopez

Service On

JAMILA J REED

830 SPRUCE STREET  
WILMINGTON, DE 19801

File Comments

So Ans:  
Sheriff

Writ Returned

er Tracy Lopez  
Deputy Sheriff

Attempted Service

Attempted Service

Attempted Service

Attempted Service

Attempted Service

Service

Served By: [Signature]

Served: [Signature]

Date Served: 1/23 Time Served: 4:45

Place Served

Substitute

Attorney:

BRUCE L HUDSON, ESQ  
800 KING STREET  
SUITE 302  
Wilmington, DE 19801

(302)656-9850

Description of Person Served

Male Female

Hair Color Skin Color Ethnicity

Height Weight Age

Other Identifying Marks

000031

JAN 26 REC'D

IN THE SUPERIOR COURT OF DELAWARE

**SUBPOENA**

IN AND FOR NEW CASTLE COUNTY

STATE OF DELAWARE:

v.

ID No. 0210009174

MUSTAFA WHITFIELD

TO: **Jamila J. Reed**  
**830 Spruce Street**  
**Wilmington, DE 19801**

IN SHERIFF'S HANDS  
NEW CASTLE COUNTY  
2004 JAN 22 PM 3:47

**YOU ARE COMMANDED** to appear in the Superior Court, New Castle County Courthouse, 500 N. King Street, Wilmington, Delaware on **Monday, February 2, 2004, at 10:00 a.m.**, to testify for the Defendant in the above case. **You should report to a Court bailiff for the courtroom location.**

**BRING THIS SUBPOENA WITH YOU**

This Subpoena is continuing and remains in force until the termination of the above case. You will only be released from this subpoena by order of the Court.

Returnable forthwith.

Requested By:  
**Joseph M. Bernstein, Esquire**  
**800 N. King Street, Suite 302**  
**Wilmington, DE 19801**  
**(302) 656-9850**  
**Attorney for Defendant**

*Joseph M. Bernstein*

Requesting Party's signature

*1-22-04*

Date

**By Order of the Prothonotary**

000032

*Sharon Agnew*

# SUPERIOR COURT JUDGE'S NOTICE OF A PROCEEDING SCHEDULED

Please complete and send to Prothonotary's as soon as proceeding is scheduled.

JUDGE DEL PESCO DATE Fri 3/5/04 HOUR 1:00 PM

BRIEF CAPTION State

ACTION NUMBER ~~Mustafa Whitehead~~ (0210009174); Akeem Coleman (0210008663); and Emmanuel Robinson (0210009182) RESCHEDULED FROM \_\_\_\_\_

PLAINTIFF(S) ATTORNEY(S) \_\_\_\_\_

DEFENDANT(S) ATTORNEY(S) James Bayard, Jov. Bernstein, Kevin O'Connell

STATE'S DEPUTY Martin O'Connor

TYPE OF PROCEEDING: (PLEASE CHECK)

OFFICE CONFERENCE \_\_\_\_\_

HEARING \_\_\_\_\_

ARGUMENT X

OTHER \_\_\_\_\_

ISSUE \_\_\_\_\_

ISSUE \_\_\_\_\_

ISSUE defendants' motion for new trial

JUDGE (HAS) (NEEDS) MOTION

JUDGE (HAS) (NEEDS) FILE (STRIKE INAPPLICABLE WORD)

JUDGE (NEEDS) (DOES NOT NEED) CLERK

In courtroom  
defendants to  
be transported

BRIEF OR MEMO SCHEDULE \_\_\_\_\_

MOTIONS Defense Atty. J. Bernstein gave argument for a new trial, due to the way the verdict came back.

Defense Attorneys, James Bayard and Kevin O'Connell

agrees with Atty. J. Bernstein's argument.

DECISION Judge Del Pesco, stated that the motion for a new trial is denied and that the State had very strong evidences and no reason to believe that the jurors was trading votes.

COURT CLERK Curtis COURT REPORTER Donnelly

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR New Castle COUNTY

89

04m-11-028

STATE OF DELAWARE

CR. A. NO. N/A

ID. NO. 0210009174

V.

Mustafa Whitfield  
DEFENDANT

NOTICE OF MOTION

PLEASE TAKE NOTICE, that the enclosed Motion for Habeas Corpus  
\_\_\_\_\_ will be presented to this Honorable Court at the  
earliest possible convenience.

FILED  
PROCLAMATORY  
2004 NOV -5 PM 4:14

11/2/04  
DATE

Mustafa Whitfield  
317479

Delaware Correctional Center  
1181 Paddock Road  
Smyrna, Delaware 19977



IN THE Superior COURT OF THE STATE OF DELAWARE  
IN AND FOR New Castle COUNTY

IN THE MATTER OF THE PETITION OF ) C.A. NO.  
) HABEAS CORPUS

THE STATE OF DELAWARE,

You are commanded:

To have \_\_\_\_\_ who is allegedly detained in your custody, before  
the Superior Court of the State of Delaware, at the County Court House at  
\_\_\_\_\_ Delaware immediately after the receipt of this writ; and to abide any  
order which the Court shall make concerning Petitioner.

And further, to certify fully in writing under oath the true cause of said detention,  
and to have there a copy of all process or Orders, if any, under which he is detained and  
also this writ.

\_\_\_\_\_  
Prothonotary

Dated: \_\_\_\_\_

To the above named Respondent:

In case of your failure to produce \_\_\_\_\_ as above  
commanded, and fully certify in writing under oath the true cause of his detention, with a  
copy of all process or orders, if any, under which he is detained, within 3 days after  
service hereof upon you if the place where he is detained is not more than 20 miles from  
the County Court House, or within 6 days if such place is more than 20 miles, you may  
be adjudged to be in contempt of court.

\_\_\_\_\_  
Prothonotary

000035

State of Delaware

ss.

\_\_\_\_\_ County

\_\_\_\_\_, Sheriff of \_\_\_\_\_ County, deposes  
and says that he served personally upon \_\_\_\_\_ the  
original Writ of Habeas Corpus of which the within is a true copy, by leaving the original  
Writ with \_\_\_\_\_  
on \_\_\_\_\_, 20 .

SWORN TO AND SUBSCRIBED before me, \_\_\_\_\_, 20 .

\_\_\_\_\_  
Prothonotary

000036

IN THE Superior COURT OF THE STATE OF DELAWARE  
IN AND FOR New Castle COUNTY

IN THE MATTER OF

C.A. No.

\_\_\_\_\_  
for a Writ of Habeas Corpus

MEMORANDUM IN SUPPORT OF WRIT OF HABEAS CORPUS

The above defendant submits this memorandum in support of his petition for Writ of Habeas Corpus. Petitioner states the following in support:

1. The Criminal Action Number in this case is \_\_\_\_\_.
2. Your petitioner is being unlawfully restrained of his liberty, in violation of the laws of the State of Delaware, by reason of  
Violations of his U.S. Constitutional Rights 4<sup>th</sup> Amendment.  
Mustafa Whitfield was charged because he was suppose to  
have been positively identified by two police officers as a  
suspect in a crime. Those officers testified that they didn't see  
the suspects faces. One officers testified he couldn't tell the suspects  
face. Also: One officer testified he never saw the suspects again.

WHEREFORE, petitioner prays the petition issue and the writ granted.

Mustafa Whitfield  
317479  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE. 19977

Dated: 1/12/04

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR \_\_\_\_\_ COUNTY

\_\_\_\_\_  
PLAINTIFF

v.  
\_\_\_\_\_  
\_\_\_\_\_

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O R D E R

IT IS HEREBY ORDERED, this \_\_\_\_\_ day of \_\_\_\_\_,  
\_ that the attached Motion for \_\_\_\_\_  
has been read and considered.

IT IS ORDERED that the Motion is hereby GRANTED/DENIED.

IT IS FURTHER ORDERED THAT \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
JUDGE

000038

81 2

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN THE MATTER OF


MUSTAFA A. WHITFIELD

)  
)  
) CIVIL ACTION NO. 04M-10-083  
) CRIMINAL ID: 0210009174  
)  
)  
)  
) HABEAS CORPUS PETITION

ORDER

This 3 day of Nov, 2004, upon review of the foregoing Petition for a Writ of Habeas Corpus and the record in this case, it is the decision of the Court that the Petition is hereby **DENIED**. Petitioner is legally detained. Petitioner fails to state a claim upon which such a writ may be issued. The relief requested is not properly granted through a Writ of Habeas Corpus.

**IT IS SO ORDERED**

  
The Honorable Susan C. DelPesco

Orig: Prothonotary  
cc: Defendant

Department of Justice

2004 NOV -4 PM 12:35

000039

FILED  
PROTHONOTARY



In The Superior Court Of The State Of Delaware  
In And For New Castle County

(1-5)

86

Mustafa A. Whitfield  
Petitioner.

04M-10-083

Civil Action No. N/A

v.

Thomas Carroll, Warden  
Delaware Correctional Center

FILED  
PROCLAMATORY  
2004 OCT 27 AM 11:00

Petition For A Writ of Habeas Corpus

Petitioner, Mustafa A. Whitfield, herewith requests that this honorable Court issue a Writ of Habeas Corpus to Thomas Carroll, Warden, Delaware Correctional Center to test the validity of his continued incarceration. Herewith, Petitioner asserts the following as facts and grounds supporting his cause.

I. Jurisdiction

I. The Superior Court has jurisdiction to issue a Writ of Habeas Corpus pursuant to 10 Del.C. §§.6902

II. Parties

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II(2). The Petitioner, Mustafa A. Whitfield, is currently incarcerated at the Delaware Correctional Center, 1481 Paddock Road, Smyrna, DE.

(3). Respondent, Thomas Carroll, is Warden of the Delaware Correctional Center, and is custodian of the Petitioner's detention

(2-5)

### III. Statement of Facts

4. On October 15, 2002 the Petitioner was charged with the crimes he is in prison because a Detective Stephen Misetic typed in report, warrants, and affidavits he was positively identified (two officers). Those two officers were Matthew Derbyshire and David Prado.

The Petitioner, Mustafa Whittfield wrote Court back in December 2003 for lack of probable cause. Whittfield asserts that Derbyshire nor Prado never positively identified him.

In January, 2004 Derbyshire testified at Whittfield's trial that he didn't see the suspects faces. Derbyshire also testified that he never saw Whittfield on October 15, 2002 or later that day. Derbyshire said he only typed a report on what he and David Prado did that evening.

Also in January, 2004 David Prado testified he couldn't see what the suspects had on except dark clothing. Prado also testified that he couldn't tell the race of the suspects who he and Derbyshire saw running.

000041

It is believed that these officers told Detective Stephen Misetic the same thing on October 15, 2002 because Misetic testified a few days after them and never testified they said different. Meaning: Misetic never testified that on October 15, 2002 they told him they saw me and I was a suspect, but changed their minds during trial.

(3-5)

000042

Somehow Misetic got positive identification out of "I didn't see him and I couldn't tell the faces of the suspects. If these officers never testified that they positively identified me as a suspect now can Misetic say they did."

5. Petitioner Mustafa Whiffield asserts that the prosecution denied him due process and obstruction of justice. Petitioner asserts that the state knew the probable cause for Whiffield's arrest was because he was supposed to have been positively identified. The state in opening arguments on Jan. 29, 2004 stated Derbyshire and Prado saw Whiffield running from the crime scene and jumping a wall. The state also said that as Whiffield was walking with Emmanuel Robinson he was recognized as a suspect by David Prado.

January 30, 2004 neither officer testified to that. On February 5, 2004 in closing arguments the state never mention that Derbyshire and Prado positively identified me. In opening arguments the state said they did which means the state noticed that I wasn't positively identified.

Meaning: In opening argument the state said that Derbyshire and Prado will say they saw Mustafa Whiffield doing things that would justify his arrest and to be charged. After Derbyshire and Prado testified to something that basically they didn't positively identify me, the state in closing arguments didn't mention they did. So the state noticed they (officers Derbyshire and Prado) didn't see me and didn't inform the court. In fact on February 4, 2004 the Court asked if anyone wanted to bring anything to the court's attention, the state was

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(4-5)

first to say no, knowing they should have told the court.

#### IV. Statement of Claim

6. A Writ of "Habeas Corpus" is extraordinary remedy issuable by trial court to inquire into legality of persons detained or under restraint of their liberty. In Interest of Stevens, 652 A2d 18, (1995). Purpose of writ of habeas corpus is to benefit prisoners, and writ is designed to accomplish speedy inquiry into allegedly unlawful detention through summary judicial proceeding. 10 Del.C. ss 6901.

7. Defendant asserts that his continued detention is illegal for the following reasons:

1) In order to issue a warrant sufficient facts must appear on the face of the affidavit so that an appellate court can verify the factual basis for the judicial officer's determination regarding the existence of probable cause.

Since Derbyshire and Prado never positively identified me the night I was arrested or at my trial probable cause didn't exist. If Prado and Derbyshire did positively identify me as a suspect the night of the crime, why didn't Detective Stephen Missetic testify that they did. He typed it in reports.

Which in result is a violation of the Fourth Amendment and others



(5-5)

V. Relief Sought

8. Wherefore, Defendant prays that a Writ of Habeas Corpus be issued forthwith directed to Warden Thomas Carroll, Delaware Correctional Center, requiring him to produce the body of the defendant - petitioner before a Judge of the Superior Court, in and for New Castle County, together with the alleged grounds and the cause of this detention, so that the constitutionality and legality of his confinement and detention may be inquired into with respect to the law of the State of Delaware and such other rights guaranteed by the Constitution of Delaware and the United States. Upon deficiency, defendant prays for his immediate release from custody.

Dated: 10/19/04

Respectfully,

Mustafa A. Whitfield  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE. 19977

000044



FILED  
PROTHONOTARY  
2004 OCT 27 AM 11:00

10/21/04

Dear Judge (Wilmington Superior Court) Peggy Ableman

Hello! My name is Mustafa Whitfield. I'm writing to request a open hearing in front of the Court. Because my court appointed attorney doesn't want answer questions I need for representing myself in my appeal. My court appointed attorney sent me a letter telling me I should do certain things to put the motion in but refuses to answer my question I wrote him about to file the Motion.

Meaning: There are questions I asked him in a letter that I wrote that I need answers to, to write my Motion.

The questions were:

1. When you took on my case in March 2003, who gave you the police report Detective Stephen Misetic? (Names if any or agency)
2. When you filed in court my suppression hearing and severance hearing in May 2003 did you have all the warrants.
3. If he read any of my pro-se motions in late 2003 about

no probable cause. And if he did why didn't he file them.

Your Honor it comes to find out that probable cause didn't exist like I wrote in Dec. 2003. I wrote about two police officers never positively identified me like a detective wrote they did. Those officers came to trial a month later and never identified me

4. Why didn't he raise my no probable cause at trial, for a new trial or on appeal?

5. Why didn't he raise my police officer perjury on appeal when I made it clear I wanted to?
6. Why didn't he raise any of my issues I wanted him to raise on appeal?

Mr. Bernstein (Court appointed attorney) doesn't want to answer these questions for my motion. I'm asking the court to either grant my hearing so I can confront Mr. Bernstein on these issues or order him to respond to the question and send them within 72 hours after receiving them. Thank You.

*Mustafa Whitfield*

**JOSEPH M. BERNSTEIN**

ATTORNEY-AT-LAW

800 N. KING STREET • SUITE 302  
WILMINGTON, DELAWARE 19801  
(302) 656-9850  
FAX (302) 656-9836

October 1, 2004

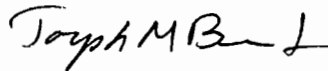
Mustafa Whitfield #317479  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

**Re: Whitfield v. State, No. 156, 2004**

Dear Mr. Whitfield:

I have received several letters from you indicating that you want to "fire" me as your attorney and that you desire to represent yourself in the above appeal. If you want to pursue such a course of action, you will have to file a written motion with the Court. The Court's address is: Supreme Court of Delaware, P.O. Box 476, Dover, DE 19903. You also have to send a copy of the motion to me and the attorney for the State, Loren C. Meyers, Esquire, Department of Justice, Carvel State Building, 820 N. French Street, Wilmington, DE 19801.

Very truly yours,



Joseph M. Bernstein

JMB/jm  
cc: Clerk, Supreme Court of Delaware  
Loren C. Meyers, Esquire

000048

RECEIVED

40  
Bates

## REFERRAL TO JUDGE

NOV 20 2004

JUDGE DEL PESCO'S OFFICE

DATE:

11/15/04

TO:

Judge Delpesco

FROM: STEVE NAPIER  
CRIMINAL DEPARTMENT  
PROTHONOTARY OFFICE

The enclosed matter is being referred to you as:

☐ Office Judge

☒ Sentencing Judge

Sentence Date:

☐ Specially Assigned Judge

☐ Other:

This maybe a duplicate

See prev.  
order of  
J. Delpesco  
enjoining  
from  
filing.  
- M. Green  
11/19/04  
20

When completed, please return to me in the attached folder,  
using the reverse side of this memo as a transmittal  
document.

If you have any questions, please call me at Ext. 50702.

(Thank  
you.)

NOV 19 PM 3:10



91 2

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

IN THE MATTER OF

v.

MUSTAFA WHITFIELD

:  
:  
: C.A. No. 04M-11-028  
: and  
: Criminal I.D. No. 0210009174  
:

**ORDER**

Pending before the Court are the following *pro se* applications filed by Mustafa Whitfield:

1. Defendant's (second) petition for habeas corpus filed on November 5, 2004;
2. Defendant's *pro se* motion to compel filed on November 5, 2004; and
3. Defendant's letter to the Honorable Joseph R. Slights received on November 5, 2004.

It appears to the Court that:

1. March 3, 2003, Joseph Bernstein, Esquire, was ordered to represent Mr. Whitfield.
2. February 6, 2004, Mustafa Whitfield was convicted by a jury trial. He was sentenced on April 16, 2004, on the following charges:

IN 03-01-2167	Attempted Robbery First Degree;
IN 03-01-0735	Assault Second Degree;
IN 03-01-2169	Possession of a Deadly Weapon During the Commission of a Felony;
IN 03-01-2170	Reckless Endangering First Degree;
IN 03-01-2171	Possession of a Firearm During the Commission of a Felony;
IN 03-01-0736	Wearing a Disguise During the Commission of a Felony; and
IN 03-01-0737	Conspiracy Second Degree.

2004 NOV 17 PM 2:18  
FILED  
PROTOSTATARY

3. March 5, 2004, the Court denied defendant's motion for new trial and motion for judgment of acquittal.
4. March 10, 2004, Mr. Whitfield filed a *pro se* appeal of his conviction.

5. March 15, 2004, the Supreme Court sent a letter to Mr. Bernstein regarding his continuing obligation to represent Mr. Whitfield.

6. April 8, 2004, by letter from Judge Susan C. Del Pesco to Mr. Whitfield, Mr. Whitfield was advised that "you continue to file numerous papers in this court even though you are represented by counsel. . . You are directed to cease filing papers in this court. Papers must be filed by your attorney."

7. April 23, 2004, Mr. Bernstein filed appeal (No. 156, 2004) on behalf of Mr. Whitfield.

8. May 10, 2004, *pro se* Supreme Court appeal [filed March 10, 2004, No. 96, 2004] dismissed.

9. July 22, 2004, Mr. Whitfield's letter to Judge T. Henley Graves, Superior Court Sussex County, was forwarded to Superior Court New Castle County.

10. July 30, 2004, Superior Court record sent to Supreme Court.

11. August 3, 2004, letter from Mr. Whitfield to the court.

12. October 14, 2004, defendant's *pro se* request for transcript filed.

13. October 27, 2004, defendant's *pro se* petition for habeas corpus (04M-10-083) filed.

14. November 2, 2004, defendant's letter referred to Mr. Bernstein.

15. November 3, 2004, habeas corpus (04M-10-083) petition DENIED.

16. November 5, 2004, defendant's *pro se* motion to compel filed.

17. November 5, 2004, defendant's letter to Judge Joseph R. Slight.

18. November 5, 2004, defendant's *pro se* petition for habeas corpus (04M-11-028) filed.

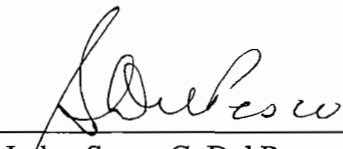
WHEREFORE, IT IS THE ORDER of this Court that:

1. Defendant's petition for habeas corpus (04M-11-028) is DENIED, as frivolous and repetitive;

2. Defendant's *pro se* motion to compel (filed November 5, 2004) is DENIED; and

3. Defendant is hereby ENJOINED from future filings *pro se* filings in this Court pending the decision of the Supreme Court appeal (No. 156, 2004). The Prothonotary is directed to reject any such filings.

SO ORDERED this 17th day of November, 2004.

---

Judge Susan C. Del Pesco

Original to Prothonotary

xc: Mustafa Whitfield, Delaware Correctional Center  
Joseph Bernstein, Esquire  
Martin B. O'Connor, Esquire  
Deborah L. Webb, Chief Deputy Clerk, Supreme Court (No. 156, 2004)

FILED  
PROTHONOTARY  
2004 NOV 17 PM 2:18

**Green Marge (Courts)**

---

**From:** Green Marge (Courts)  
**Sent:** Monday, November 15, 2004 1:22 PM  
**To:** McBride Rebecca (DOC)  
**Cc:** Bates Kathleen (Courts)  
**Subject:** FW: Habeas - Mustafa Whitfield, sbi# 00317479  
**Importance:** High

Please send me a copy of your response to the Court's request for information regarding Mr. Whitfield's pending habeas petition.

Thanks.

Margaret S. Green  
Secretary to Judge Susan C. Del Pesco  
Superior Court of Delaware  
500 N. King St.  
Wilmington, DE 19801  
Phone: (302) 255-0659  
Fax: (302) 255-2273  
E-mail: [Marge.Green@state.de.us](mailto:Marge.Green@state.de.us)

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**From:** Bates Kathleen (Courts)  
**Sent:** Monday, November 08, 2004 4:54 PM  
**To:** McBride Rebecca (DOC)  
**Cc:** DelPesco Susan (Courts); Green Marge (Courts)  
**Subject:** Re: Habeas - Mustafa Whitfield, sbi# 00317479

This defendant has filed a Petition for Writ of Habeas Corpus. Please identify for the court all commitments on which this defendant is being held. Please provide in your response Case ID Numbers, Criminal Action Numbers, and amounts and types of bail if applicable, sentences being served, detainers, capiases and warrants, i.e. whatever is holding the defendant.

Please respond directly to Judge DelPesco to whom this Habeas Corpus petition has been assigned, with a copy to her secretary Marge Green and myself. A quick response may eliminate the need to have the defendant transported to the courthouse for a hearing.

Kathleen Bates  
Judicial Case Processor Supervisor  
New Castle County Superior Court  
Prothonotary Office  
(302) 255-0701

000053

11/15/2004

## REFERRAL TO JUDGE

**DATE:** 11/8/04

**TO:** Judge Del Pesco

**FROM: KATHY BATES  
CRIMINAL DEPARTMENT  
PROTHONOTARY OFFICE**

RECEIVED

**The enclosed matter is being referred to you as:**

NOV - 8 2004

☐ **Office Judge**

JUDGE DEL PESCO'S OFFICE

☒ **Sentencing Judge** **Sentence Date:**

☐ **Specially Assigned Judge**

☐ **Other:** 2nd Habeas Petition filed - Previous Petition  
- Sent up 11/1/04 - Denied 11/3/04

**When completed, please return to me in the attached folder, using the reverse side of this memo as a transmittal document.**

**If you have any questions, please call me at Ext. 50701.**

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State of Delaware v. MUSTAFE WHITFIELD DOB: 05/10/1985  
State's Atty: MARTIN B O'CONNOR , Esq. AKA: MUSTAFA A WHITFIELD  
Defense Atty: JOSEPH M BERNSTEIN , Esq. MUSTAFA A WHITFIELD

Co-Defendants: AKEEM COLEMAN , EMMANUEL ROBINSON

Assigned Judge:

Charges:

Count	DUC#	Crim.Action#	Description	Dispo.	Dispo. Date
001	0210009174	N03010734	ATT CARJACKING	DISM	05/20/2003
002	0210009174	IN03010735	ASLT 2ND	TGAI	02/06/2004
003	0210009174	IN03010736	DISGUISE	TG	02/06/2004
004	0210009174	IN03010737	CONSP 2ND	TG	02/06/2004
005	0210009174	IN03012167	ATT. ROBBERY 1S	TG	02/06/2004
006	0210009174	IN03012168	PFDCF	TNG	02/06/2004
007	0210009174	IN03012169	PFDCF	TG	02/06/2004
008	0210009174	IN03012170	RECK END 1ST	TG	02/06/2004
009	0210009174	IN03012171	PFDCF	TG	02/06/2004
010	0210009174	IN03012172	PDWB JUVENILE	TNG	02/06/2004
011	0210009174	IN03012173	POSS DRUG PARAP	NOLP	08/14/2003
012	0210009174	IN03010738	TRF.COC.5-50G	NOLP	08/14/2003
013	0210009174	IN03010739	PWITD NSI CS	NOLP	08/14/2003
014	0210009174	IN03010740	PWITD NSII CS	NOLP	08/14/2003
015	0210009174	IN03010741	MAINT DWELLING	NOLP	08/14/2003

No.	Date	Event	Judge
1	01/14/2003	CASE ACCEPTED IN SUPERIOR COURT. ARREST DATE: 10/15/2002 PRELIMINARY HEARING DATE: WAVIED AT FAMILY COURT 12/19/03 BAIL: CASH BAIL 62,000.00	
2	02/10/2003	INDICTMENT, TRUE BILL FILED.NO 19 SCHEDULED FOR ARRAIGNMENT AND BAIL REPRESENTATION 02/25/03 AT 9:30 CASE REVIEW 03/24/03 AT 9:00	
3	02/10/2003	CASE CONSOLIDATED WITH:0210013334	
4	02/10/2003	MEMORANDUM FILED, CONSOLIDATION FORM FAXED TO NCC DENTENTION CENTER.	
5	02/28/2003	CONFLICT LETTER FILED BY WENDY RUEBECK.	
6	03/05/2003	SUMMONS MAILED.	
	03/14/2003		REYNOLDS MICHAEL P.

000055

State of Delaware v. MUSTAFE WHITFIELD DOB: 05/10/1985  
 State's Atty: MARTIN B O'CONNOR , Esq. AKA: MUSTAFA A WHITFIELD  
 Defense Atty: JOSEPH M BERNSTEIN , Esq. MUSTAFA A WHITFIELD

No.	Date	Event	Judge
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BAIL MODIFIED. BAIL NOW SET AT  
 CASH BAIL 62,000.00 100%

You are ordered to have no contact, direct or indirect  
 ANTHONY MEEK  
 (hereinafter the "Alleged Victim"), or with the alleged vict  
 residence, place of employment, school, church, or at any ot

No direct or indirect contact means that you are not to  
 physical presence of the alleged victim. Also, you cannot s  
 messages or notes to the alleged victim by mail, other perso  
 You cannot send messages to, or communicate with, the allege  
 telephone, or other electronic medium. You cannot send pres  
 any other object to the alleged victim. You are not to cont  
 victim in ANY way. It is a violation of this order if you h  
 except your attorney, contact the alleged victim for you.

---

You are to make no attempts to locate the alleged victi

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- 7 03/14/2003 REYNOLDS MICHAEL P.  
ARRAIGNMENT CALENDAR, ARRAIGNED.
- 8 03/14/2003 REYNOLDS MICHAEL P.  
ORDER: JOSEPH BERNSTEIN, ESQ. APPOINTED TO REPRESENT DEFENDANT.
- 03/24/2003 TOLIVER CHARLES H. IV  
CASE REVIEW CALENDAR: SET FOR FINAL CASE REVIEW 4/21/03 @ 1:45
- 9 04/10/2003  
MOTION TO TRANSFER DETENTION OF DEFENDANT FROM  
NEW CASTLE COUNTY DETENTION CENTER TO GANDER HILL.  
(CHRISTINA SHOWALTER, DAG.)
- 10 04/15/2003  
MOTION FOR TRANSFER GRANTED. DEFENDANT TO BE TRANSFERRED FROM  
NEW CASTLE COUNTY DETENTION CENTER TO GANDER HILL.
- 11 04/21/2003 BABIARZ JOHN E. JR.  
CASE REVIEW CALENDAR FINAL CASE REVIEW CONTINUED.  
DEFENDANT'S REQUEST-DEFENSE ATTY IN TRIAL.
- 12 05/08/2003  
MOTION FOR REDUCTION OF BAIL FILED.  
BY JOSEPH BERNSTEIN, ESQ  
SCHEDULED FOR 5/20/03 AT 9:30.
- 05/19/2003 JURDEN JAN R.  
FINAL CASE REVIEW: NO PLEA/SET FOR TRIAL
- 13 05/19/2003  
ORDER SCHEDULING TRIAL FILED.  
TRIAL DATE: \_\_7/22/03

000056

State of Delaware v. MUSTAFE WHITFIELD DOB: 05/10/1985  
State's Atty: MARTIN B O'CONNOR , Esq. AKA: MUSTAFA A WHITFIELD  
Defense Atty: JOSEPH M BERNSTEIN , Esq. MUSTAFA A WHITFIELD

No.	Date	Event	Judge
		CASE CATEGORY: _____1	
		ASSIGNED JUDGE (CATEGORY 1 CASES ONLY): RRC	
		UNLESS THE COURT IS ADVISED WITHIN 2 WEEKS OF THE UNAVAILABILITY OF NECESSARY WITNESSES, THE COURT WILL CONSIDER THE MATTER READY FOR TRIAL. ABSENT EXCEPTIONAL CIRCUMSTANCES, RESCHEDULING OR CONTINUANCE REQUESTS WILL BE DENIED.	
14	05/20/2003	VAVALA MARK STEPHEN	
		MOTION FOR REDUCTION OF BAIL GRANTED.	
		BAIL SET IN THE AMOUNT OF	
		SECURED BAIL-HELD	107,000.00 100%
15	06/12/2003	MOTION TO SUPPRESS FILED J BERNSTEIN	
16	06/12/2003	MOTION FOR SEVERANCE OF CHARGES FILED BY J BERNSTEIN	
17	06/12/2003	LETTER FROM J BERNSTEIN TO JUDGE COOCH	
		RE: MOTIONS FILES WITH THE COURT TO BE HEARD PRIOR TO TRIAL	
18	06/13/2003	DEL PESCO SUSAN C.	
		ORDER: 1. DEFENDANT'S MOTION TO SUPPRESS HAS BEEN SCHEDULED FOR A HEARING ON FRIDAY, JULY 18TH 2002 AT 10:00AM	
		2. THE STATE SHALL FILE A RESPONSE TO THE MOTION ON OR BEFORE JULY 11, 2003 WHICH SETS FORTH FACTS AND LEGAL AUTHORITIES RELIED UPON BY THE STATE IN OPPOSITION TO THE MOTION. THE STATE SHALL ALSO ADVISE THE COURT OF THE STATUS OF ANY PLEA NEGOTIATIONS BY JULY 11, 2003.	
		SEE FULL ORDER IN FILE	
		IT IS SO ORDERED.	
30	06/18/2003	COOCH RICHARD R.	
		LETTER FROM: JUDGE COOCH TO: MARTIN O'CONNOR, ESQ. & JOSEPH BERNSTEIN, ESQ.	
		RE: DEFENDANT HAS FILED A MOTION FOR SEVERANCE OF CHARGES. THE STATE SHALL FILE A RESPONSE TO THE MOTION ON OR BEFORE JUNE 27, 2003. I WILL HEAR THE MOTION (IN CHAMBERS) ON WEDNESDAY, JULY 9 AT 9:00AM (IF THIS DATE IS NOT CONVENIENT TO COUNSEL, PLEASE ADVISE MY SECRETARY IMMEDIATELY). MS. BRENHOCH ADVISES ME THAT DEFENDANT'S NEWLY FILED MOTION FOR SUPPRESSION WILL BE SEPARATELY SCHEDULED BY HER AND HEARD POTENTIALLY BY ANOTHER JUDGE. TRIAL IS SCHEDULED FOR JULY 22, 2003.	
20	06/23/2003	COOCH RICHARD R.	
		COPY OF LETTER FROM JOSEPH BERNSTEIN, ESQ. TO JUDGE COOCH	
		RE: THE ABOVE CASE IS A CATEGORY #1 CASE THAT IS ASSIGNED TO YOUR HONOR. ENCLOSED ARE COPIES OF THE FOLLOWING MOTIONS WHICH HAVE BEEN FILED WITH THE COURT:	
		1. MOTION FOR SUPPRESSION OF EVIDENCE;	

000057

State of Delaware v. MUSTAFE WHITFIELD DOB: 05/10/1985  
State's Atty: MARTIN B O'CONNOR , Esq. AKA: MUSTAFA A WHITFIELD  
Defense Atty: JOSEPH M BERNSTEIN , Esq. MUSTAFA A WHITFIELD

No.	Date	Event	Judge
		2. MOTION FOR SEVERANCE OF CHARGES TRIAL IS SCHEDULED ON JULY 22, 2003. LEAVE WAS GRANTED BY THE COURT AT FINAL CASE REVIEW ON MAY 19, 2003 TO FILE THESE MOTIONS OUT OF TIME.	
74	06/27/2003	LETTER FROM: MARTIN B. O'CONNER, DAG. TO: JUDGE COOCH. RE: _THE STATE HAS HAD AN OPPORTUNITY TO REVIEW THE ABOVE DEFENDANT'S MOTION FOR SEVERANCE OF CHARGES. BY LETTER DIRECTIVE OF THIS COURT, THE STATE WAS TO RESPOND BY JUNE 27, 2003 TO THE DEFENDANT'S MOTION. (SEE LETTER IN FILE).	
19	06/30/2003	SUBPOENA(S) MAILED.	
25	07/01/2003	LETTER FROM M. O'CONNOR TO JOH RE: STATE'S REQUESTING THE TRIALS BE CONTINUED AND THAT THE COURT SET A SCHEDULING CONFERENCE TO ASSIGN A NEW TRIAL DATE	
21	07/03/2003	THE STATE IS REQUESTING THAT THE ABOVE REFERENCE TRIALS BE CONTINUED, AND THAT THE COURT SET A SCHEDULING CONFERENCE TO ASSIGN A NEW TRIAL DATE. FILED BY MARTIN B. O'CONNOR, DAG FILED ON 0210009174, 0210008663, 0210009188	
24	07/03/2003	LETTER FROM M. O'CONNOR TO RRC RE: COURT REQUESTED THE STATE TO NOTIFY IT AS TO WHAT SET OF CHARGES WILL BE TRIED FIRST. STATE REQUESTED A CONTINUANCE ON 6/27/03 IN THE SHOOTING CASE. IF GRANTED THE STATE WILL BE CONTENT TO GO FORWARD WITH THE NARCOTICS CHARGES	
28	07/03/2003	COOCH RICHARD R. COPY OF LETTER FROM JOSEPH BERNSTEIN, ESQ. TO JUDGE COOCH RE: I RECENTLY RECEIVED THE ENCLOSED ORDER DATED JULY 7, 2003 WHICH INDICATES THAT THE SUPPRESSION HEARING IS SCHEDULED ON AUGUST 15, 2003. THIS CONFLICTS WITH INFORMATION I PREVIOUSLY RECEIVED THAT THE SUPPRESSION HEARING WAS SCHEDULED ON JULY 18, 2003 WITH JUDGE DELPESCO PLEASE CLARIFY THIS CONFLICT. IN ANY EVENT, I WILL PROVIDE THE COURT WITH AN AMENDED MOTION IN ACCORDANCE WITH THE ORDER DATED JULY 7, 2003 TO BE FILED ON OR BEFORE JULY 16, 2003.	
22	07/07/2003	SUBPOENA(S) MAILED.	
27	07/07/2003	COOCH RICHARD R. ORDER: CONCERNING SCHEDULED & DEADLINES FOR COUNSEL TO FILE RESPONSE *****ORDER VACATED 07/10/03	
23	07/09/2003		

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State of Delaware v. MUSTAFE WHITFIELD DOB: 05/10/1985  
State's Atty: MARTIN B O'CONNOR , Esq. AKA: MUSTAFA A WHITFIELD  
Defense Atty: JOSEPH M BERNSTEIN , Esq. MUSTAFA A WHITFIELD

No.	Date	Event	Judge
		HEARING, MOTION FOR SEVERANCE. THE MOTION WAS PREVIOULSY GRANTED PER JUDGE COOCH.	
39	07/10/2003	EMAIL FILED TO:MARTIN O'CONNOR, ESQ. FROM JUDGE COOCH RE: THE SUPPRESSION HEARING WILL BE HELD FRIDAY, JULY 18TH AT 10 AM BEFORE JUDGE SLIGHTS. DEFENDANT SHALL FILE AN AMENDED MOTION TO SUPPRESS BY 5 PM ON JULY 14. STATE SHALL FILE RESPONSE BY NOON ON JULY 17TH.	
26	07/14/2003	AMENDED MOTION TO SUPPRESS FILED	
29	07/15/2003	HERLIHY JEROME O. ORDER: 1. TRIAL DATE OF 07/22/03 IS CONTINUED TILL 10/03 PER STATE'S REQUEST 2. STATE TO COMPLETE DNA TESTING BY 10/03/03 3. CASE TO BE REASSIGNED TO ANY JUDGE IN THE CRIMINAL ROTATION 4. NO DEFENSE OBJECTI ON TO CONTINUANCE. COURT SUGGESTED TO THE DAG THAT BECAUSE OF HIS AND DEFENSE COUNSEL'S CAPITAL CASE SCHEDULES, THE STATE MAY HAVE TO ARRANG E FOR A POSSIBLE PICK-UP.	
32	07/16/2003	LETTER FROM M. O'CONNOR TO JRS. RE: STATE'S RESPONSE TO DEFT'S MOTION	
31	07/18/2003	SLIGHTS JOSEPH R. III TRIAL CALENDAR/SUPPRESSION HEARING: MOTION GRANTED DRUG CHARGES TO BE DROPPED	
33	07/25/2003	ORDER SCHEDULING TRIAL FILED. TRIAL DATE: 10/15/03 CASE CATEGORY: #1 ASSIGNED JUDGE (CATEGORY 1 CASES ONLY): HLA UNLESS THE COURT IS ADVISED WITHIN 2 WEEKS OF THE UNAVAILABILITY OF NECESSARY WITNESSES, THE COURT WILL CONSIDER THE MATTER READY FOR TRIAL. ABSENT EXCEPTIONAL CIRCUMSTANCES, RESCHEDULING OR CONTINUANCE REQUESTS WILL BE DENIED.	
34	08/01/2003	MOTION FOR REDUCTION OF BAIL FILED. BY JOSEPH BERNSTEIN, ESQ. SCHEDULED FOR 08/12/03 9:30AM	
35	08/12/2003	REYNOLDS MICHAEL P. MOTION FOR REDUCTION OF BAIL GRANTED. BAIL SET IN THE AMOUNT OF SECURED BAIL-HELD 88,000.00 100%	
36	08/13/2003	CASE REVIEW PLEA HEARING: SET FOR TRIAL	



State of Delaware v. MUSTAFE WHITFIELD DOB: 05/10/1985  
 State's Atty: MARTIN B O'CONNOR , Esq. AKA: MUSTAFA A WHITFIELD  
 Defense Atty: JOSEPH M BERNSTEIN , Esq. MUSTAFA A WHITFIELD

No.	Date	Event	Judge
37	08/14/2003	EMAIL FILED TO: MARTIN O'CONNOR (DAG) FROM: C. LEMIEUX RE: INCORRECT CASE NUMBER ON NOLLE PROSEQUI. PERMISSION GRANTED TO CHANGE THE CASE NUMBER.	
38	08/15/2003	NOLLE PROSEQUI FILED BY ATTORNEY GENERAL. AS TO: IN03-01-0738, 0739, 0740, 0741 & 2173 REASON: (20) EVIDENCE SUPRESSED	
40	09/29/2003	SUBPOENA(S) MAILED.	
	10/09/2003	TRIAL CALENDAR-JURY TRIAL-CONTINUED. PROSECUTION REQUEST. DAG IN TRIAL OFFICE CONFERENCE TO BE SCHEDULED PER RSG. *APPROVED BY RSG ON 10/09/03 TRIAL IS SCHEDULED FOR 10/15/03.	GEBELEIN RICHARD S.
41	11/07/2003	ORDER SCHEDULING TRIAL FILED. TRIAL DATE:TRIAL IS SCHEDULED FOR THURSDAY, 01/29/2004. CASE CATEGORY:THIS MATTER IS A CATEGORY # 1 CASE. ASSIGNED JUDGE (CATEGORY 1 CASES ONLY):TO JUDGE JOESPH R. SLIGHTS III. UNLESS THE COURT IS ADVISED WITHIN 2 WEEKS OF THE UNAVAILABILITY OF NECESSARY WITNESSES, THE COURT WILL CONSIDER THE MATTER READY FOR TRIAL. ABSENT EXCEPTIONAL CIRCUMSTANCES, RESCHEDULING OR CONTINUANCE REQUESTS WILL BE DENIED.	
44	11/26/2003	DEFENDANT'S LETTER FILED.	
42	12/15/2003	DEFENDANT'S LETTER FILED. TO: JUDGE SLIGHTS	
43	12/19/2003	LETTER FROM JUDGE SLIGHTS TO JOSEPH BERNSTEIN, ESQ. RE: SUPERIOR COURT CRIMINAL RULE 47 PROVIDES IN PERTINENT PART, THE COURT WILL NOT CONSIDER PRO SE APPLICATIONS BY DEFENDANTS WHO ARE REPRESENTED BY COUNSEL. PLEASE NOTIFY YOUR CLIENT THAT FURTHER CORRESPONDENCE OR MOTIONS SHOULD BE MAILED DIRECTLY TO YOUR OFFICE FOR APPROPRIATE ACTION.	SLIGHTS JOSEPH R. III
46	12/30/2003	DEFENDANT'S LETTER FILED.	
45	01/05/2004	SUBPOENA(S) MAILED.	
47	01/29/2004	TRIAL CALENDAR- WENT TO TRIAL JURY	DEL PESCO SUSAN C.
48	01/29/2004		

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State of Delaware v. MUSTAFE WHITFIELD DOB: 05/10/1985  
State's Atty: MARTIN B O'CONNOR , Esq. AKA: MUSTAFA A WHITFIELD  
Defense Atty: JOSEPH M BERNSTEIN , Esq. MUSTAFA A WHITFIELD

No.	Date	Event	Judge
		SUBPOENA(S) SERVED BY SHERIFF.	
49	02/03/2004	MOTION FOR JUDGEMENT OF ACQUITTAL FILED. FILED BY JOSEPH BERNSTEIN,ESQ SENT UP TO JURY TRIAL JUDGE DEL PESCO	
50	02/06/2004	DEL PESCO SUSAN C. CHARGE TO THE JURY FILED.	
51	02/06/2004	DEL PESCO SUSAN C. JURY TRIAL HELD. JURY SELECTED AND SWORN 1/29/04. ON 2/06/04 JURY FOUND DEFENDANT GUILTY OF (2167) ATT. ROB. 1ST; (0735) ASSAULT 2ND; (2169) PFD CF; (2170) REC. END. 1ST; (2171) WEARING DISGUISE DURING COM. FELONY; (0737) CONSP. 2ND. JURY FOUND DEFENDANT NOT GUILTY OF (2168) PFD CF AND (2172) PDWBPP. DEFENDANT REPRESENTED BY JOSEPH BERNSTEIN, ESQ. ATTORNEYS FOR STATE, MARTIN O'CONNOR, ESQ. AND JOHN DONAHUE, ESQ. PSI ORDERED. SENTENCING DATE TO BE DETERMINED. ALL EXHIBITS RETAINED BY PROTH. DEPT. CR/BAIRD/GARRI/HONAKER CC/SHERR/BENNETT	
54	02/10/2004	MOTION TO AUTHORIZE PAYMENT FOR TRANSCRIPTS FILED. FILED BY JOSEPH M BERNSTEIN,ESQ	
53	02/11/2004	TRANSCRIPT FILED. VERDICT-FEBRUARY 6, 2004 BEFORE: HONORABLE SUSAN C. DEL PESCO AND JURY (ORIGINAL TRANSCRIPT IN CASE # 0210008663)	
52	02/12/2004	DEL PESCO SUSAN C. MOTION AND ORDER TO AUTHORIZE PAYMENT FOR TRANSCRIPTS: IT IS ORDERED THAT THE COST OF PREPARATION OF THE TRIAL TRANSCRIPTS IN THE ABOVE ACTION BE BORNE BY THE STATE, IN LIGHT OF THE INDIGENCY OF THE DEFENDANT.	
55	02/17/2004	MOTION FOR NEW TRIAL FILED. BY JOSEPH M BERNSTEIN,ESQ REFERRED TO ISO FOR TRIAL JUDGE DEL PESCO (02/18)	
60	03/03/2004	LETTER FROM: MARTIN O'CONNER AND JOHN DONAHUE, DAG. TO: JUDGE DEL PESCO. LETTER MEMORANDUM AS THE STATE'S RESPONSE TO THE ABOVE REFERENCED DEFENDANT'S MOTION FOR NEW TRIAL. THE STATE SUBMITS THAT THE DEFTS. MOTION FOR A NEW TRIAL BE DENIED. *SEE FULL LETTER IN FILE*	
56	03/05/2004	DEL PESCO SUSAN C.	

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State of Delaware v. MUSTAFE WHITFIELD DOB: 05/10/1985  
State's Atty: MARTIN B O'CONNOR , Esq. AKA: MUSTAFA A WHITFIELD  
Defense Atty: JOSEPH M BERNSTEIN , Esq. MUSTAFA A WHITFIELD

No.	Date	Event	Judge
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SENTENCED BY JUDGE SUSAN C. DELPESCO. THEREFORE, YOUR CORRESPONDENCE IS BEING FORWARDED TO NEW CASTLE COUNTY FOR ANY ACTION DEEMED NECESSARY.

76 07/29/2004

LETTER FROM SUPREME COURT TO SHARON AGNEW, PROTHONOTARY  
RE: TRANSCRIPT AND RECORD ARE DUE 08/02/04.  
174, 2004

(ALSO WHITFIELD 156, 2004 AND COLEMAN 208, 2004)

75 07/30/2004

LETTER FROM SUPREME COURT TO SHARON AGNEW, PROTHONOTARY  
RE: TRANSCRIPT AND RECORD DUE AUGUST 2, 2004  
156, 2004

(ALSO ROBINSON 174, 2004 AND COLEMAN 208, 2004)

07/30/2004

RECORDS SENT TO SUPREME COURT.

77 08/02/2004

DEL PESCO SUSAN C.

LETTER FROM JUDY GOFF, SECRETARY TO JUDGE T. HENLEY GRAVES  
TO DEFENDANT

RE: YOUR LETTER ADDRESSED TO JUDGE T. HENLEY GRAVES WAS FORWARDED TO SUSSEX COUNTY SUPERIOR COURT, WHERE JUDGE GRAVES PRESIDES. YOUR CASE IS A NEW CASTLE COUNTY SUPERIOR CASE, AND YOU WERE SENTENCED BY JUDGE SUSAN C. DEL PESCO. THEREFORE, YOUR CORRESPONDENCE IS BEING FORWARDED TO NEW CASTLE COUNTY FOR ANY ACTION DEEMED NECESSARY.

78 08/03/2004

DEFENDANT'S LETTER FILED.

LETTER REGARDING WHAT WAS DONE WRONG AT THE TRIAL.

\*SEE FULL LETTER IN FILE.

80 08/06/2004

RECEIPT OF RECORD ACKNOWLEDGED BY SUPREME COURT

81 10/06/2004

TRANSCRIPT FILED.

TRIAL- FEBRUARY 6, 2004

BEFORE JUDGE DEL PESCO AND JURY

82 10/07/2004

TRANSCRIPT FILED.

TRIAL- FEBRUARY 6, 2004

BEFORE JUDGE DEL PESCO AND JURY

83 10/14/2004

DEFENDANT'S REQUEST FILED.

REQUEST FOR COMPLETE COPY OF TRANSCRIPT. FEBRUARY 3RD PORTION OF THE TRANSCRIPT NOT GIVEN. COPY OF LETTER REFERRED TO THE COURT REPORTERS

*Supr. Ct. 156, 2004*

( as of 11/15/2004 )

State of Delaware v. MUSTAFE WHITFIELD DOB: 05/10/1985  
State's Atty: MARTIN B O'CONNOR , Esq. AKA: MUSTAFA A WHITFIELD  
Defense Atty: JOSEPH M BERNSTEIN , Esq. MUSTAFA A WHITFIELD

No.	Date	Event	Judge
		OFFICE.	
86	10/27/2004	PETITION FOR A WRIT OF HABEAS CORPUS FILED (PRO SE) REFERRED TO JUDGE DELPESCO. DATE REFERRED: 11/01/04 CIVIL CASE NO: 04M-10-083	
84	11/02/2004	DEFENDANT'S LETTER FILED, CONCERNING CASE.	
85	11/02/2004	REFERRAL MEMORANDUM. REFERRED TO JOSEPH BERNSTEIN, ESQ. BY JUDGE DELPESCO. REF.# 84	
87	11/03/2004	ORDER: HABEAS CORPUS PETITION 04M-10-083 IS DENIED.	
88	11/05/2004	MOTION TO COMPEL FILED PRO SE. REFERRED TO JUDGE DEL PESCO	

\*\*\* END OF DOCKET LISTING AS OF 11/15/2004 \*\*\*  
PRINTED BY: CSCMGRE

000063

State of Delaware v. MUSTAFE WHITFIELD DOB: 05/10/1985  
State's Atty: MARTIN B O'CONNOR , Esq. AKA: MUSTAFA A WHITFIELD  
Defense Atty: JOSEPH M BERNSTEIN , Esq. MUSTAFA A WHITFIELD

Event		
No.	Date	Judge

-----  
\$50.00 ATTORNEY FEE.

64 04/21/2004 DEL PESCO SUSAN C.  
~~SENTENCE: ASOP ORDER SIGNED & FILED 4/21/04.~~

66 05/10/2004  
MANDATE FILED FROM SUPREME COURT: APPEAL DISMISSED.  
SUPREME COURT CASE NO: 96, 2004  
SUBMITTED: MARCH 26, 2004  
DECIDED: APRIL 20, 2004  
~~BEFORE HOLLAND, STEELE AND JACOBS, JUSTICES~~

~~\*PURSUANT TO SUPREME COURT RULE 29(B) THE WITHIN APPEAL IS DISMISSED~~

67 ~~06/29/2004~~  
~~LETTER FROM SUPREME COURT TO MICHELE HONAKER, COURT REPORTER~~  
~~RE: AN EXTENSION TO FILE THE TRANSCRIPT IS GRANTED, THE~~  
~~TRANSCRIPT IS NOW DUE JULY 22, 2004.~~  
~~156, 2004~~

~~07/20/2004~~  
~~RECORDS SENT TO SUPREME COURT.~~

69 07/22/2004  
TRANSCRIPT FILED.  
TRIAL TRANSCRIPT - JANUARY 30, 2004  
BEFORE JUDGE DEL PESCO

70 07/22/2004  
TRANSCRIPT FILED.  
TRIAL TRANSCRIPT - JANUARY 29, 2004  
BEFORE JUDGE DEL PESCO

71 07/22/2004  
TRANSCRIPT FILED.  
TRIAL TRANSCRIPT - FEBRUARY 3, 2004  
BEFORE JUDGE DEL PESCO

72 07/22/2004  
TRANSCRIPT FILED.  
TRIAL TRANSCRIPT - FEBRUARY 6, 2004  
BEFORE JUDGE DEL PESCO

73 07/22/2004  
TRANSCRIPT FILED.  
VERDICT - FEBRUARY 6, 2004  
BEFORE JUDGE DEL PESCO

000064

79 07/22/2004  
LETTER FROM JUDY F. GOFF TO MUSTAFA WHITFIELD  
YOUR LETTER ADDRESSED TO JUDGE T. HENLEY GRAVES WAS FORWARDED TO  
SUSSEX COUNTY SUPERIOR COURT, WHERE JUDGE GRAVES PRESIDES.  
YOUR CASE IS A NEW CASTLE COUNTY SUPERIOR COURT CASE, AND YOU WERE



State of Delaware v. MUSTAFE WHITFIELD DOB: 05/10/1985  
State's Atty: MARTIN B O'CONNOR , Esq. AKA: MUSTAFA A WHITFIELD  
Defense Atty: JOSEPH M BERNSTEIN , Esq. MUSTAFA A WHITFIELD

No.	Date	Event	Judge
		<b>HEARING HELD: MOTION FOR A NEW TRIAL BEFORE JUDGE DEL PESCO:</b> DEFENSE ATTORNEY JOSEPH BERNSTEIN GAVE ARGUMENT FOR A NEW TRIAL, DUE TO THE WAY THE VERDICT CAME BACK, DEFENSE ATTORNEYS, JAMES BAYARD AND KEVIN O'CONNELL AGREES WITH ATTORNEY JOSEPH BERNSTEIN ARGUMENT. JUDGE DEL PESCO, <del>STATED THAT A MOTION FOR A NEW TRIAL IS DENIED</del> AND THAT THE STATE HAD VERY STRONG EVIDENCES AND NO REASON TO BELIEVE THAT THE JURORS WAS TRADING VOTES.	
57	03/05/2004		DEL PESCO SUSAN C.
		<b>ORDER: MOTION FOR JUDGEMENT OF ACQUITTAL: DENIED.</b>	
65	03/11/2004		
		LETTER FROM: MARTIN O'CONNOR AND JOHN DONAHUE, DAG. TO: JUDGE DEL PESCO. PLEASE ACCEMPT THIS LETTER MEMORANDUM AS THE STATE'S RESPONSE TO THE ABOVE REFERENCED DEFT. MUSTAFA WHITFIELD'S MOTION FOR A NEW TRIAL FILED ON OR ABOUT FEBRUARY 2, 2003. IT APPEAR THAT THE MOTION IS BASED ON AN ARGUMENT THAT THE COURT'S ALLEN CHARGE PRODUCED A COMPROMISE VERDICT. AS IS DISCUSSED IN THIS MEMORANDUM, DEFENDANTS ARE IN FACT NOT ENTITLED TO A NEW TRIAL, AND THE COURT SHOULD DENY THE MOTION. <del>*SEE FULL LETTER IN FILE*</del>	
58	03/18/2004		
		LETTER FROM SUPREME COURT TO JOSEPH BERNSTEIN, ESQ. RE: CONTINUING OBLIGATION.	
59	04/05/2004		
		MOTION FOR TRANSCRIPT FILED PRO SE. REFERRED TO JUDGE DEL PESCO.	
61	04/05/2004		
		AFFIDAVIT IN-SUPPORT OF MOTION TO PROCEED IN FORMA PAUPERIS FILED PRO SE. REFERRED TO JUDGE DEL PESCO	
62	04/08/2004		DEL PESCO SUSAN C.
		LETTER FROM: JUDGE DEL PESCO TO: MR WHITFIELD YOU CONTINUE TO FILE NUMEROUS PAPERS IN THIS COURT EVEN THOUGH YOU ARE REPRESENTED BY COUNSEL. IT IS A WASTE OF THE TIME OF THE COURT TO PROCESS YOUR PAPERS. A PERFECT EXAMPLE IS THE FACT THAT YOU FILED A MOTION TO PROCEED IN FORMA PAUPERIS AND A MOTION FOR A TRANSCRIPT WHEN I PREVIOUSLY SIGNED AN ORDER AUTHORIZING THE TRANSCRIPT IN RESPONSE TO A MOTION FILED BY MR. BERNSTEIN ON FEBRUARY 9, 2004. YOU ARE DIRECTED TO CEASE FILING PAPERS IN THIS COURT. PAPERS MUST BE FILED BY YOUR ATTORNEY.	
63	04/16/2004		DEL PESCO SUSAN C.
		SENTENCING CALENDAR: DEFENDANT SENTENCED.	
68	04/16/2004		DEL PESCO SUSAN C.
		CORRECTED ASOP ORDER SIGNED AND FILED. CORRECTION TO REFLECT	

000065

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR New Castle COUNTY

#95

STATE OF DELAWARE

V.

Mustafa Whitfield

Name of Movant on Indictment

Mustafa Alexander Whitfield

Correct full name of Movant

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\*  
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\*  
\*  
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\*

No. 0210009174

\* PN 03-01-0735-RI, 0736-RI  
\* 0737-RI, 2167-RI, 2169-RI  
\* 2170-RI, 2171-RI

PROTHONOTARY  
RECEIVED  
JAN 8 2008

**MOTION FOR POSTCONVICTION RELIEF**

INSTRUCTIONS

- (1) This motion must be legibly handwritten or typewritten, and signed by the movant under penalty of perjury.
- (2) All grounds for relief and supporting facts must be included, and all questions must be answered briefly in the proper space on the form.
- (3) Additional pages are not permitted. If more room is needed, use the reverse side of the sheet.
- (4) No citation of authorities is required. If legal arguments are submitted, this should be done in a separate memorandum.
- (5) Only convictions that were included in the same plea agreement or were tried together may be challenged in a single motion.
- (6) When the motion is completed, the original must be mailed to the Prothonotary in the county in which the judgment of conviction was entered. No fee is required.
- (7) The motion will be accepted if it conforms to these instructions. Otherwise, it will be returned with a notation as to the deficiency.

**MOTION**

000066

1. County in which you were convicted New Castle County
2. Judge who imposed sentence Judge Susan C. Del Pesco
3. Date sentence was imposed April 16, 2004

4. Offense(s) for which you were sentenced and length of sentence(s):  
Attempted Robbery 1<sup>st</sup> Degree, Assault 2<sup>nd</sup> Degree, PFDCE,  
Reckless Endangering 1<sup>st</sup> Degree, Conspiracy 2<sup>nd</sup> Degree, PDWPP,  
Wearing A Disguise During Commission Of A Felony, PFDCE, PFDCE

5. Do you have any sentence(s) to serve other than the sentence(s) imposed because of the judgment(s) under attack in this motion? YES ☐ NO ☒

If your answer is "yes" give the following information:

Name and location of court(s) which imposed the other sentence(s).

Date sentence(s) imposed: April 16, 2004

Length of sentence(s): 11 years

6. What was the basis for the judgment/s of conviction? (check one)

☐ Plea of guilty

☐ Plea of guilty without admission of guilty (Robinson Plea)

☐ Plea of nolo contendere

☒ Verdict of jury

☐ Finding of judge (nonjury trial)

7. Judge who accepted plea or presided at trial Judge Susan Del Pesco

8. Did you take the witness stand and testify? (check one)

No trial ☐ Yes ☒ No ☐

9. Did you appeal from the judgment of conviction? YES ☒ NO ☐

If your answer is "yes" give the following information:

Case number of appeal No. 156, 2004

Date of court's final order or opinion September 20, 2004 March 7, 2005

10. Other than a direct appeal from the judgment(s) of conviction, have you filed any other motion/s or petitions/s seeking relief from the judgment/s in state or federal court? Yes ☐ No ☒ How many? ☐

If your answer is "yes", give the following information as to each:

Nature of proceeding/s N/A

Grounds raised N/A

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Was there an evidentiary hearing? ☐

Case number of proceeding/s ☐

Date/s of court's final order/s or opinion/s ☐

Did you appeal the result/s? ☐

11. Give the name of each attorney who represented you at the following stages of the proceedings relating to the judgment/s under attack in this motion:

At plea of guilty or trial Joseph M. Bernstein

On appeal Joseph M Bernstein

In any postconviction proceeding \_\_\_\_\_

12. State every ground on which you claim that your rights were violated. If you fail to set forth all grounds in this motion, you may be barred from raising additional grounds at a later date. You must state facts in support of the ground/s which you claim. For your information, the following is a list of frequently raised grounds for relief (you may also raise grounds that are not listed here): double jeopardy, illegal detention, arrest, or search and seizure, coerced confession or guilty plea; uninformed waiver of the right to counsel, to remain silent, or to speedy trial, denial of the right to confront witnesses, to subpoena witnesses, to testify, to ineffective assistance of counsel, suppression of favorable evidence, or unfulfilled plea agreement.

Ground one: Illegal Arrest And Detention

Supporting Facts: (state facts briefly, without citing cases)

Defendant asserts arrest is illegal due to identification issues, the Police even testified at trial they did not ever see defendant's face nor could the Police even say what race the perpetrator's were, nor could the victim identify the defendant as one of the supposed perpetrators

Ground two: Search And Seizure In Violation Of The 4<sup>th</sup> Amendment

Supporting Facts: (state facts briefly, without citing cases)

Defendant was seized by Police with no probable cause or evidence linking defendant to the shooting, no fingerprints, no forensic evidence at the crime scene or evidence tests to check if defendant had fired or discharged a pistol or any type of reliable identification. The police just assumed guilt.

Ground three: \_\_\_\_\_

Supporting Facts: (state facts briefly, without citing cases)

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ 000068

If any of the grounds listed were not previously raised, state briefly what grounds were not raised, and give your reason/s for not doing so: \_\_\_\_\_

\_\_\_\_\_

Wherefore, movant asks this court to grant him all relief to which he may be entitled in this proceeding.

I declare the truth of the above under penalty of perjury.

Date \_\_\_\_\_

\_\_\_\_\_  
Signature of Movant



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

000069

STATE OF DELAWARE, :  
 :  
 v. : Criminal I.D. No. 0210009174  
 : IN 03-01-0735R1, 0736R1, 0737R1,  
 MUSTAFA WHITFIELD : 2167R1, 2169R1, 2170R1, 2171R1

Submitted: March 17, 2005

Decided: June 27, 2005

WHEREAS, this 27<sup>th</sup> day of June 2005, the defendant's motion for postconviction relief having been duly considered, it appears:

1. On February 6, 2004, the defendant was found guilty of attempted robbery first degree, assault second, degree, two counts of possession of a firearm during the commission of a felony, reckless endangerment first degree, wearing a disguise during the commission of a felony, and conspiracy second degree. The defendant was sentenced to eleven years of incarceration followed by a period of probation.

2. The defendant appealed the conviction. In a very detailed and comprehensive opinion, the Supreme Court reviewed the facts of the indicent and addressed the issues raised on appeal.<sup>1</sup>

3. In his postconviction motion, the defendant raises two issues:

Defendant asserts arrest is illegal due to identification issues, the police even testified at trial they did not ever see defendant's face or could the police even say what race the perpetrator's were, nor could the victim identify the defendant as one of the supposed perpetrators.

Defendant was seized by police with no probable cause or evidence linking defendant to the shooting, no fingerprints, no forensic evidence at the crime scene or evidence tests to check if defendant had fired or discharged a pistol or any type of reliable identification. The police just assumed guilt.

4. Whitfield argued at trial that he was not the person involved in the crime. His identification as a perpetrator was an issue at trial which was presented to the jury. There was abundant circumstantial evidence to implicate him in the crime. The jury made the factual finding of guilt. That conviction has been affirmed. The argument that there must be other or

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<sup>1</sup>Whitfield v. State, Del. Supr., No. 156, 2004, Holland J. (Dec. 29, 2004).



*State of Delaware v. Mustafa Whitfield*

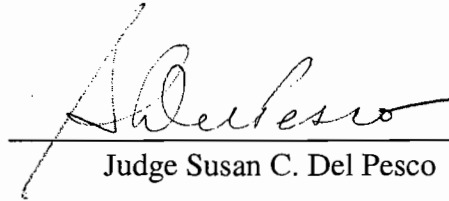
June 27, 2005

Page Two

additional evidence is simply frivolous.

WHEREFORE, the motion for postconviction relief is summarily DISMISSED pursuant to Super. Ct. Crim. Rule 61(d)(4).

IT IS SO ORDERED.

  
\_\_\_\_\_  
Judge Susan C. Del Pesco

Original to Prothonotary

xc: Mustafa Whitfield, Delaware Correctional Center  
Martin B. O'Connor, Esquire, Deputy Attorney General  
Investigative Services File

FILED  
JUN 27 10 4:20  
2005

000070

156 , 2004

J. M. BERNSTEIN

MUSTAFA WHITFIELD,  
Defendant Below,  
Appellant,  
v.E. R. MCFARLAN  
G. E. SMITHSTATE OF DELAWARE,  
Plaintiff Below,  
Appellee.

DF \$ 00.00

2004

- 1 Apr 23 Notice of appeal from the convictions and sentences dated 04/16/04 in the Superior Court in and for New Castle County, by Judge Del Pesco with designation of transcript, in Cr. ID No. 0210009174; Cr. A. Nos. IN03-01-0735 through -0737, and IN03-01-2167, -2169 through -2171 (served by hand 4/23/04) (service shown on court reporter by hand 4/23/04) (mfm) (afb).
- 2 Apr 23 Affidavit under Rule 26(c) by Joseph M. Bernstein, Esquire. (served by hand 04/23/04) (mfm)
- 3 Apr 27 Letter dated 4/27/04 from Assistant Clerk to Kathleen Feldman, transcript is due to be filed by 6/2/04 (afb). (co-defendant to 208, 2004 and 174, 2004-due 6/22/04) (156, 2004, 208, 2004 and 174, 2004 transcript being filed on 6/22/04) (dlw)
- 4 Jun 25 Letter dated 6/22/04 from Michele Honaker to Chief Deputy Clerk, requesting an extension to file the transcript. (eas)
- 5 Jun 25 Letter dated 6/25/04 from Senior Court Clerk to Michele Honaker, granting an extension to file the transcript by 7/22/04. (eas)
- 6 Jul 27 Court reporter's final transcript log entry: Prothonotary received 7/22/04. (eas)
- 7 Jul 27 Letter dated 7/27/04 from Senior Court Clerk to Prothonotary, record is due to be filed by 8/2/04. (eas)
- 8 Aug 04 Record w/ transcript. (eas)
- 9 Aug 04 Brief schedule issued. (opening brief due 9/3/04) (eas)
- 10 Aug 23 Letter dated 8/21/04 from Mustafa Whitfield to Clerk, requesting a Supreme Court docket sheet and Superior Court docket sheet. (sent) (eas)
- 11 Aug 26 Motion under Rule 15(b) by appellant. (served by hand

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12 Aug 26 Order dated 8-26-04 by Clerk, appellant's opening brief and appendix are due 9-13-04. (clh)

13 Aug 30 Letter dated 8/26/04 from appellant to Clerk, requesting copies from the Superior Court record. (eas) (sent 9/2/04)

14 Sep 08 Motion under Rule 15(b) by appellant. (served by hand 09/08/04) (mfm)

15 Sep 09 Order dated 9-9-04 by Clerk, appellant's opening brief and appendix are due 9-20-04. (clh)

16 Sep 13 Letter dated 9/8/04 from Mustafa Whitfield to Clerk, regarding his appeal. (eas)

17 Sep 14 Letter dated 9/14/04 from Senior Court Clerk to Joseph Bernstein, Esquire, forwarding Mr. Whitfield's letter for appropriate disposition. (eas)

18 Sep 20 Appellant's opening brief and appendix. (served by hand 9/20/04) (dlw)

19 Sep 22 Brief deficiency notice dated 9/22/04 from Assistant Clerk to appellant (corrections due 9/29/04) (afb).

20 Sep 23 Letter dated 9/21/04 from Mustafa Whitfield to Clerk, requesting to proceed pro se. (eas)

21 Sep 24 Letter dated 9/24/04 from Senior Court Clerk to Joseph M. Bernstein, Esquire, forwarding Mr. Whitfield's letter for appropriate. (eas)

22 Sep 27 Letter dated 9/24/04 from Joseph M. Bernstein, Esquire to Assistant Clerk, enclosing appellant's brief corrections. (eas)

23 Oct 04 Copy of letter dated 10/1/04 from Joseph M. Bernstein, Esquire to Mustafa Whitfield, directing him to file an appropriate motion if he wishes to proceed pro se. (eas)

24 Oct 20 State's answering brief. (served by mail 10/20/04) (mfm)

25 Oct 21 Notice dated 10-21-04 from Clerk to counsel, the case will be submitted for decision on briefs as of 11-17-04 (clh) (RJH, JBJ, HDR)

26 Nov 03 Appellant's reply brief. (served by hand 11/03/04) (mfm)

27 Nov 03 Letter dated 11/1/04 from Mustafa Whitfield to Clerk, regarding his appeal. (eas)

28 Nov 12 Letter dated 11/12/04 from Senior Court Clerk to Joseph

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- 29 Nov 19 Copy of Order dated 11/17/04 by Judge Del Pesco, denying Mr. Whitfield's petition for habeas corpus, the motion to compel and enjoining Mr. Whitfield from future filings in the Superior Court pending the decision in this matter. (eas)
- 30 Dec 10 Letter dated 12/8/04 from Joseph M. Bernstein, Esquire to Clerk, advising that the appellants in Nos. 156, 2004, 208, 2004 and 174, 2004 were co-defendants who were tried jointly. (eas)
- 31 Dec 29 Opinion decided 12/29/04 by Holland, J., AFFIRMED. (RJH, JBJ, HDR) (eas)  
2005
- 32 Jan 04 Memo dated 1/4/05 from Justice Holland to Clerk, enclosing two corrected pages to the Opinion decided on 12/29/04. (eas)
- 33 Jan 11 Motion for Rehearing en Banc (served by hand 1/11/05) (amc)
- 34 Feb 04 Order dated 2/4/05 by Holland, J., appellant's motion for rehearing en Banc is DENIED. (MTS, RJH, CB, JBC, HDR) (eas)
- 35 Feb 07 Mandate to clerk of court below. Case Closed (record retained for appeal Nos. 174, 2004 and 208, 2004) (clh)
- 36 Feb 18 Prothonotary's receipt of mandate on 2-9-05. (clh)
- 37 Feb 18 Document entitled, "Motion Seeking a Hearing on Denial of Federal Constitutional Rights under Rule 61" by appellant (no service shown) (afb).
- 38 Feb 18 Letter dated 2/18/05 from Assistant Clerk to appellant advising that the Court will take no action with regard to his document filed 2/18/05 because the case is closed (afb).
- 39 Feb 24 Letter dated 2/22/05 from appellant, requesting docket sheets. (sent) (eas)  
2006
- 40 Nov 27 Letter dated 11/19/06 from appellant to Clerk requesting copies. (copies sent) (docket sheet sent) (kms)

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327 , 2005

PRO SE  
(DCC-317479)

MUSTAFA WHITFIELD,  
Defendant Below,  
Appellant,  
v.

T. J. DONOVAN

STATE OF DELAWARE,  
Plaintiff Below,  
Appellee.

DF \$ 00.00

2005

- 1 Jul 21 Notice of appeal from the Order dated 6-27-05 in the Superior Court in and for New Castle County, by Judge Del Pesco, in Cr.ID No. 0210009174, without designation of transcript. (no service shown-copy sent)(clh)
- 2 Jul 21 Appellant's opening brief and appendix. (no service shown-copy sent)(clh)
- 3 Jul 21 Letter dated 7-21-05 from Clerk to appellee, the answering brief is now due to be filed by 8-22-05. (clh)
- 4 Jul 21 Letter dated 7-21-05 from Clerk to Prothonotary, record is due to be filed by 8-15-05. (clh)
- 5 Jul 25 Letter dated 7/21/05 from appellant, attaching an affidavit to be filed with his appeal. (eas) (docket sheet sent)
- 6 Aug 18 Letter dated 8/16/05 from Linda Jablonski to Clerk, requesting a 15-day extension to file the record. (eas)
- 8 Aug 18 Motion under Rule 15(b) by appellee. (served by mail 08/18/05) (mjd)
- 9 Aug 18 Letter dated 8/18/05 from Senior Court Clerk to Linda Jablonski, granting an extension to file the record by 9/6/05. (eas)
- 10 Aug 19 Order dated 08/18/05 by Jacobs, J., appellee's Answering Brief is due 08/29/05. (mjd)
- 11 Aug 23 Letter dated 8/21/05 from appellant, objecting to the State's request for an extension to file the answering brief. (eas)
- 12 Aug 23 Letter dated 8/23/05 from Senior Court Clerk to appellant, advising him that the Court is not going to consider his objections and will take no further action with respect to his letter since the issues therein are moot. (eas)
- 13 Aug 29 Appellee's answering brief (served by mail 8/29/05)

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14 Sep 07 Record as ordered. (dlw) (filed on 9/6/05)

15 Sep 16 Appellant's reply brief. (no service shown-copy sent)  
(clh)

16 Sep 26 Notice dated 9-26-05 from Clerk to parties, the case  
will be submitted for decision on briefs as of 10-7-05.  
(clh)

17 Dec 13 Order dated 12/13/05 by Steele, C.J., AFFIRMED.  
(MTS,CB,HDR) (eas)

18 Dec 21 Motion for Rehearing en Banc by appellant. (no service  
shown-copy sent) (eas)  
2006

19 Jan 09 Order dated 1/9/06 by Steele, C.J., appellant's Motion  
for Rehearing en Banc is DENIED. (MRS,RJH,CB,JBJ,HDR)  
(eas)

20 Jan 10 Record and mandate to clerk of court below. Case Closed  
(afb).

21 Jan 23 Letter dated 1/18/06 from appellant to Clerk,  
requesting a copy of the Superior Court's Order and  
the Supreme Court Order. (sent) (eas)

000075

096 , 2004

PRO SE  
(GH-317479)

MUSTAFA WHITFIELD,  
Defendant Below,  
Appellant,  
v.

L. C. MEYERS

STATE OF DELAWARE,  
Plaintiff Below,  
Appellee.

DF \$ 00.00

2004

1	Mar 11	Letter dated 03/05/04 from Mustafa Whitfield to Court regarding his Superior Court trial (no service shown) (mfm) (filed 03/10/04) (deemed to be appeal of decision by Judge Del Pesco of 3/5/04 in Cr. ID No. 021009174) (afb).
2	Mar 15	Letter dated 3/15/04 from Assistant Clerk to Joseph M. Bernstein, Esquire, requesting him to recognize his continuing obligation and file a formal notice of appeal and, if appropriate, directions to court reporter by 3/25/04 (afb).
3	Mar 18	Letter dated 3/17/04 from Joseph M. Bernstein, Esquire, advising that Mr. Whitfield is currently pending sentencing, which is scheduled for 4/16/04, and that he intends to file an appeal after Mr. Whitfield is sentenced (service shown) (afb).
4	Mar 18	Notice to show cause issued to appellant. (afb)
5	Mar 26	Appellant's certified receipt of notice to show cause on 3/22/04. (eas)
6	Mar 26	Letter dated 3/24/04 from appellant to Assistant Clerk, responding to the notice to show cause. (eas)
7	Apr 20	Order dated 4/20/04 by Holland, J., DISMISSED (RJH MTS JBJ) (afb).
8	May 06	Certified copy of Order dated 4/20/04 to clerk of court below. Case Closed. (afb)
9	May 20	Prothonotary's receipt of certified copy of Order on 5/10/04 (afb).
10	Aug 17	Letter dated 8/4/04 from appellant to Clerk, requesting a Supreme Court and Superior Court docket sheet. (sent) (eas)
11	Aug 30	Letter dated 8/26/04 from appellant to Clerk, requesting copies from the Superior Court record.

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12 Feb 24 Letter dated 2/22/05 from appellant, requesting a  
docket sheet. (sent) (eas)

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IN THE SUPREME COURT OF THE STATE OF DELAWARE

MUSTAFA WHITFIELD,	§
	§ No. 156, 2004
Defendant Below,	§
Appellant,	§ Court Below – Superior Court
	§ of the State of Delaware,
v.	§ in and for New Castle County
	§ Cr.A. No. 0210009174
STATE OF DELAWARE,	§
	§
Plaintiff Below,	§
Appellee.	§

Submitted: November 17, 2004

Decided: December 29, 2004

Before **HOLLAND, JACOBS** and **RIDGELY**, Justices.

Upon appeal from the Superior Court. **AFFIRMED.**

Joseph M. Bernstein, Esquire, Wilmington, Delaware, for appellant.

Elizabeth R. McFarlan, Esquire and Gregory E. Smith, Esquire,  
Department of Justice, Wilmington, Delaware, for appellee.

**HOLLAND**, Justice:

The defendant-appellant, Mustafa Whitfield and co-defendants, Emmanuel Robinson and Akeem Coleman were jointly indicted on the following charges: (I) Attempted Robbery in the First Degree; (II) Possession of a Firearm During Commission of a Felony; (III) Assault in the Second Degree; (IV) Possession of a Firearm During Commission of a Felony (“PFDCF”); (V) Reckless Endangering in the First Degree; (VI) Possession of a Firearm During Commission of a Felony (“PFDCF”); (VII) Wearing a Disguise During Commission of a Felony; (VIII) Conspiracy in the Second Degree; and (IX) Possession of a Deadly Weapon by a Person Prohibited (“PDWPP”). Following a joint trial by jury, all of the defendants were convicted of all of the charges except Counts II and IX, as to which all of the defendants were found “not guilty.”

Whitfield has raised three issues on appeal. First, he contends that the trial judge should have granted his Motion for Acquittal. Whitfield argues that the offenses of Reckless Endangering and Assault in the Second Degree (and the accompanying weapons charges) are “included” in the offense of Attempted Robbery in the First Degree and did not constitute separate offenses. Second, Whitfield submits the question whether the offenses of Reckless Endangering, Assault in the Second Degree (and the accompanying weapons charges) and Attempted Robbery in the First Degree constituted a



single offense or separate multiple offenses should have been submitted to the jury and that the trial court abused its discretion in refusing to instruct the jury pursuant to this Court's decision in *Washington v. State*.<sup>1</sup> Third, Whitfield argues that the verdicts returned by the jury were inconsistent and amounted to "compromise verdicts" which are invalid as a matter of law.

We have concluded that each of the issues raised by Whitfield is without merit. Therefore, the judgments of the Superior Court must be affirmed.

### ***Procedural History***

At the close of the prosecution's case, Whitfield made an oral and then written motion for judgment of acquittal. The Superior Court reserved decision on the motion for judgment of acquittal. The matter continued to the defendants' case-in-chief. The jury returned verdicts in which Whitfield (as well as his two co-defendants) were found guilty of: Attempted Robbery in the First Degree; Assault in the Second Degree; Wearing a Disguise During the Commission of a Felony; two counts of PFDCF; Reckless Endangering in the First Degree; and Conspiracy in the Second Degree. The jury acquitted all three co-defendants of PDWPP and one count of PFDCF.

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<sup>1</sup> *Washington v. State*, 836 A.2d 485 (Del. 2003).

Whitfield moved for a new trial. That motion alleged one ground for relief: that the jury's verdicts represented a compromise verdict which was the product of coercion and the court's decision to give the jury an *Allen* charge over the defendants' objection. Whitfield's motion for a new trial was denied.

Following a pre-sentence investigation, the Superior Court sentenced Whitfield to: seven years at Level V, suspended after four years for decreasing levels of supervision on the count of Attempted Robbery; four years at Level V, suspended after one year for decreasing levels of supervision on the count of Assault Second; three years at Level V on one count of PFDCF; three years at Level V, suspended immediately for decreasing levels of supervision on the count of Reckless Endangering; three years at Level V on the second count of PFDCF; two years at Level V, suspended immediately on the count of Wearing a Disguise During the Commission of a Felony; and two years at Level V, suspended immediately on the count of Conspiracy.

### ***Facts***

Anthony Meek arrived home at about 11:30 p.m. on October 14, 2002. He parked his Chevy Cavalier behind his house. While parking the

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car, Meek noticed three black males walking around the corner heading toward him. Two of the males had something wrapped around their faces.

The three men came around the front of Meek's car while he was getting out of it. One of the men, the one without anything covering his face, was holding a black semiautomatic handgun. The gunman told Meek to "Give up the keys."

When Meek began arguing, the gunman told one of the other men to grab the keys. Meek was holding the keys in his hand. As the man grabbed for the keys, Meek wrapped his arm around the man's neck and a struggle ensued. Meek tripped and the two of them fell back on the curb. The third assailant tried to pull his companion off of Meek while telling the gunman to shoot. The gunman fired toward Meek and the three would-be robbers took off running.

Meek began to chase his assailants. As they were running down the street, the gunman turned and fired at Meek again. Meek immediately felt pain in his foot and gave up the chase. Meek was subsequently treated at the hospital for a gunshot wound to his foot.

At about 11:50 p.m., two Wilmington police officers spotted three black males running a few blocks away. As the police approached to question the men, two of them jumped over a six-foot high brick wall and

ran away. The third man, Akeem Coleman, was stopped and a black 9mm handgun was retrieved from the sidewalk near where Coleman was taken into custody. The shell casings found near Meek's car were later shown to have been fired by that gun.

About five to ten minutes after Coleman was taken into custody, police saw two black men, one without a shirt, walking toward an apartment complex a few blocks from where the men had gone over the wall. Believing it odd that the men were not wearing coats in the cold weather and were sweating, the police suspected that these were the two men who had fled. The police stopped the two men who were identified as Mustafa Whitfield and Emmanuel Robinson. A white t-shirt found near Meek's car contained DNA that matched that of Robinson.

At trial, Whitfield testified in his own defense, explaining that he was on his way to meet a girl he had met on a chat line at an apartment building near where he was detained. Whitfield said that he had run into Robinson shortly before being approached by police. Coleman and Robinson elected not to testify.

Whitfield and his co-defendants were each charged with several criminal offenses as a result of their attempt to rob Meek. At trial, and on appeal, Whitfield argues that the Attempted Robbery in the First Degree,

Assault in the Second Degree and Reckless Endangerment in the First Degree convictions constituted a single offense of Attempted Robbery in the First Degree rather than three distinct offenses. Whitfield also contends that all of the related weapons offenses should be merged into the attempted robbery offense.

The Superior Court found that the evidence was sufficient to support separate charges for attempted robbery, assault and reckless endangerment. The Superior Court also determined that permitting separate convictions for the weapons offenses relating to the underlying felony offenses was supported by the evidence and the prior decisions of this Court. We have concluded that both of those determinations are correct.

Whitfield submits that his actions on the night of October 14-15 constitute a continuous course of conduct for which he may properly be convicted only once. It is well-established that “prosecutors may not manufacture additional counts of a particular crime by the ‘simple expedient of dividing a single crime into a series of temporal or spatial units.’”<sup>2</sup> However, where a defendant’s actions are “sufficiently separated in location

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<sup>2</sup> *Handy v. State*, 803 A.2d 937, 940-41 (Del. 2002) (quoting *Brown v. Ohio*, 432 U.S. 161, 169 (1977)).



and time” and where the defendant formed “distinct intents,” that conduct can constitute distinct criminal acts.<sup>3</sup>

***Acquittal Motion Properly Denied***

It is unnecessary to address Whitfield’s arguments that these crimes would constitute lesser-included offenses if the charges were attributable to a single criminal act. The record reflects that Whitfield and his co-defendants committed three distinct offenses during a continuum of criminal activity. Therefore, we conclude that Whitfield could properly be charged and convicted of all three offenses.

Whitfield and his co-defendants initially attempted to rob Meek of his car. As the three men approached Meek, Coleman displayed a handgun and directed Meek to relinquish the keys to his car. Accordingly, the record reflects the three men attempted to rob Meek by depriving him of his property through the threat of force, i.e., Attempted Robbery in the First Degree.

Meek refused to give up his keys and shouted at the would-be robbers. Coleman then told one of his confederates to take the keys. Meek resisted and a struggle ensued. Meek put his arm around the neck of his assailant and used the man as a shield. The third would-be robber separated the

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<sup>3</sup> *Washington v. State*, 836 A.2d 485, 487 (Del. 2003); *Feddiman v. State*, 558 A.2d 278 (Del. 1989).

struggling men. Coleman then fired a shot in Meek's direction. At this point, the State submits, Coleman was no longer trying to rob Meek, but was trying to protect his confederates. The record supports the State's assertion that, when Coleman shot at Meek, it was a distinct act that could properly be charged as a separate offense, i.e., Reckless Endangerment in the First Degree.

After the shot was fired, the fight broke up. The three would-be robbers fled the scene. Meek began to chase them. As all four men were running down the street, Coleman turned and fired at Meek, hitting him in the foot. This shot was separated by several minutes and occurred some distance away from the scene of the original attempted robbery.

The State submits that wounding Meek was a separate offense. The record supports the State's position. Coleman had to consciously decide to stop and shoot at Meek, with an intention of inflicting physical injury. At that point, the attempted robbery was over. The keys to Meek's car were lying on the street. When Coleman fired the second shot that hit Meek in the foot, the record reflects that it was a separate and distinct criminal act, i.e., Assault in the Second Degree.

The Superior Court properly concluded "there's a perfectly logical basis, in fact, for the three separate charges." Under the facts of this case,

the two shots fired by Coleman constituted two additional criminal offenses and should not be merged with the attempted robbery offense. The record reflects that the three charged offenses of attempted robbery, reckless endangering and assault were all separate and distinct criminal actions.

***Jury Instruction Discretionary***

Whitfield's second argument is that, as a result of this Court's decision in *Washington*,<sup>4</sup> he was entitled to a jury instruction permitting the jury to determine whether the counts of Attempted Robbery in the First Degree, Assault in the Second Degree, and Reckless Endangering in the First Degree were separate offenses or part of the same conduct. In *Washington*, this Court stated that "[i]f the trial judge makes an independent determination that sufficient evidence has been submitted to support separate convictions, defense counsel can ask for a jury instruction on those factual issues or the trial judge may *sua sponte* decide to give such an instruction."<sup>5</sup> Whitfield's trial attorney made such a request, which the trial judge denied.

In denying Whitfield's motion for a judgment of acquittal, the Superior Court explained why it was exercising its discretion to deny Whitfield's request for a jury instruction based upon the *Washington* decision:

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<sup>4</sup> *Washington v. State*, 836 A.2d 485, 491-92 (Del. 2003).

<sup>5</sup> *Id.* at 491-92.

With regard to this motion for judgment of acquittal, I think that the defendants misread *Washington*. The judgment of acquittal on Assault Second and Reckless Endangering on the grounds that the crimes were a single course of conduct, not distinct acts, which permitted multiple counts. The testimony of the victim provides separate convictions of Robbery First and Assault Second. The Robbery First allegedly occurred near the victim's car. When he was told to give up his keys, he resisted, a scuffle ensued and a firearm was discharged. The three perpetrators could not have foreseen the victim would chase them.

Consequently, no perpetrator formed the state of mind a second time until the situation arose. When the victim gave chase – the victim gave chase and one of the perpetrators turned and fired a second time.

It is the second firing which forms the basis for the charge of Assault in the Second Degree.

There's a factual issue as to whether the victim was injured at that final time or at the time of the first shot or at the time of the second shot.

He said he didn't feel any pain in his foot – until the second shot was fired, but he had been able to run until that point. . . .

There was a separation of the two incidents between time and some place. There's also a factual basis for a separate intent for the intent to shoot a second time, which could not have been formed until the victim undertook to pursue the perpetrators.

I'm not going to give any instruction that's related to the *Washington* case. . . .

So I think that there's a perfectly logical basis, in fact, for the three separate charges.

There's reason here. There's no double jeopardy issue[s]. And really the simplest explanation that the State argued is this isn't

multiple counts of the same crime. These are different crimes. It is not this scenario where there are multiple acts of rape or multiple acts of robbery, such as the *Washington* case was.

Our holding in *Washington* did not mandate giving the jury instructions at issue whenever a request is made by defense counsel.<sup>6</sup> In this case, the Superior Court provided a logical legal and factual basis for denying Whitfield's requested jury instruction. That instruction was not required by our holding in *Washington* and, under the facts of this case, the Superior Court's decision to deny Whitfield's request constituted a proper exercise of its discretion.

### ***Jury's Verdicts Reflect Lenity***

Whitfield submits the verdicts that were returned in this case were impermissible "compromise verdicts;" that is verdicts which result "from the surrender by some jurors of their conscientious convictions in return for some like surrender by the others."<sup>7</sup> Such verdicts are invalid.<sup>8</sup>

In examining "compromise verdict" claims, this Court conducts a two-part analysis. First, we must determine whether the jury verdicts are inconsistent as a matter of law. Second, if the verdicts are legally

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<sup>6</sup> *Washington v. State*, 836 A.2d 485 (Del. 2003). Compare *Weber v. State*, 547 A.2d 948, 959 (Del. 1988) (holding that "in every case when a defendant is charged with kidnapping in conjunction with an underlying crime, a specific instruction requiring the jury to find that the movement and/or restraint is independent of and not incidental to the underlying crime is mandatory.").

<sup>7</sup> *Wilson v. State*, 305 A.2d 312, 317 (Del. 1973).

<sup>8</sup> *Id.*

inconsistent, we must determine whether the outcome could have been the result of jury lenity, in which case the verdicts will remain undisturbed.<sup>9</sup>

The jury found all three defendants guilty of Attempted Robbery in the First Degree. To do so, the jury necessarily had to find that the defendants “threatened the immediate use of force upon Meek with intent to prevent or overcome resistance to the taking of property” or that they displayed what appeared to be a deadly weapon. The evidence that Coleman displayed a gun was not disputed. Thus, the State’s evidence established the elements of Attempted Robbery in the First Degree. It is not logical for the jury to find that the elements of Attempted Robbery in the First Degree had been proved, yet to find the defendants “not guilty” of possessing the same handgun during the commission of Attempted Robbery in the First Degree, as charged in Count II.

Although the jury found the defendants “not guilty” as to Count II, the jury found the defendants “guilty” of two counts of PFDCF in Counts IV and VI. Nevertheless, the jury found all of the defendants “not guilty” of PDWPP in Count IX, even though it was undisputed that all of the defendants were under the age of 18. The “not guilty” verdicts as to Counts

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<sup>9</sup> See *Davis v. State*, 706 A.2d 523, 525 (Del. 1998).



II and IX are not logical in light of the guilty verdicts as to Counts IV and VI.

Whitfield argues that “the only logical explanation for the verdict is that some of the jurors traded votes. They agreed to vote ‘guilty’ as to some or all of the charges in which guilty verdicts were returned in exchange for ‘not guilty’ votes on the remaining charges. By definition, that is a compromise verdict which must be set aside.”

The State acknowledges apparent inconsistencies in the jury’s verdicts. Nevertheless, the State submits that the Superior Court properly concluded the logical inconsistencies in the jury’s verdicts did not invalidate the remaining convictions because the judgments of acquittal constituted a demonstration of jury lenity. This Court has recognized the phenomenon of jury lenity and has upheld convictions that are part of arguably logically inconsistent judgments of acquittal.

In *Brown v. State*,<sup>10</sup> for example, the jury convicted the defendant of PFDCF but acquitted him of the underlying felony, robbery.<sup>11</sup> In affirming the weapons conviction this Court held that no requirement existed that a defendant be convicted of the underlying felony in order to uphold a firearm

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<sup>10</sup> *Brown v. State*, 729 A.2d 259 (Del. 1999).

<sup>11</sup> *Id.* at 266.

offense.<sup>12</sup> In support of the proposition that a defendant may be convicted of one crime while the jury simultaneously acquits him of another logically connected crime, we relied upon prior decisions of this Court and the United States Supreme Court addressing the issue of jury lenity.<sup>13</sup>

In *Davis*,<sup>14</sup> this Court considered legally inconsistent jury verdicts in which a defendant was convicted of delivery and distribution of a narcotic within one thousand feet of a school, but was acquitted of possession with intent to deliver.<sup>15</sup> In *Davis*, we attempted to reconcile the incongruous verdicts, but concluded that regardless of the logical inconsistencies, when a jury's verdicts can be explained by jury lenity the conviction will be sustained.<sup>16</sup> "Even if a defendant is convicted of a compound offense predicated upon a lesser offense, of which the defendant is acquitted, the verdict will stand so long as there was sufficient evidence in the record to support a conviction of the lesser offense."<sup>17</sup>

Our holdings in *Brown* and *Davis* both relied upon this Court's decision in *Tilden*.<sup>18</sup> The State charged the defendant in *Tilden* with two

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* (citing *Tilden v. State*, 513 A.2d 1302 (Del. 1986), and *United States v. Powell*, 469 U.S. 57 (1984)).

<sup>14</sup> *Davis v. State*, 706 A.2d 523 (Del. 1998).

<sup>15</sup> *Id.* at 525.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

<sup>18</sup> *Tilden v. State*, 513 A.2d 1302 (Del. 1986).

counts of Robbery in the First Degree and two counts of PFDCF.<sup>19</sup> The jury convicted the defendant of both weapons charges, but then convicted only of the lesser-included offense of Robbery in the Second Degree.<sup>20</sup> In affirming Tilden's inconsistent convictions, this Court determined that the Superior Court had properly considered the verdicts to be an exercise of jury lenity.<sup>21</sup>

In Whitfield's case, the jury had deliberated for approximately three hours when they came back into the courtroom and began a recitation of its verdicts that started with a response of "hung" as to the first charge. The Superior Court then provided an approved *Allen* charge in which it specifically directed the jurors not to surrender their conscientious convictions. Approximately one hour-and-a-half later, the jury returned with its verdicts. In denying the defendants' motion for new trial, the Superior Court stated:

[I]t seemed to me there was enough language in our standard instruction against any coercive effect, did not suggest to me there was any coercive effect, did not suggest to me there was any coercive effect or vote trading when it took them another hour and a half before they reached a verdict. This case was relatively simple. The most complicated thing about the case was there were three defendants, but the evidence was very strong, the State's evidence, because the individual, three defendants, were found in relatively close proximity to the

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<sup>19</sup> *Id.* at 1305.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 1307.

events, shortly after they occurred. And there w[ere] certainly other factors that implicated each of them.

The facts in Whitfield's case are analogous to the proceedings reviewed by this Court in *Wilson*. In *Wilson*, the jury reported that they were unable to reach a verdict.<sup>22</sup> The trial judge instructed the jurors to return to their deliberations, but simultaneously emphasized that no juror should surrender his or her conscientious convictions.<sup>23</sup> In *Wilson*, the jurors then spent an additional hour deliberating and returned a verdict of guilty as to one count of Conspiracy, but failed to render a unanimous verdict on remaining count.<sup>24</sup> In rejecting the claim that the verdicts represented a compromise, this Court concluded that "[t]his speculation [regarding the inconsistency of the verdict] is useless, however; the pertinent point is that their verdict shows a finding that all three appellants participated in planning the attack."<sup>25</sup>

In *Tilden*, this Court held that "the controlling standard for testing a claim of inconsistent verdicts is the rule of jury lenity now approved coupled with the sufficiency of evidence standard."<sup>26</sup> In Whitfield's case, the prosecution presented sufficient evidence to support each of the charges of

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<sup>22</sup> *Wilson v. State*, 305 A.2d 312, 317 (Del. 1973).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

<sup>26</sup> *Tilden v. State*, 513 A.2d 1302, 1307 (Del. 1986).

which the jury convicted Whitfield. Since the State presented sufficient evidence to establish the basis for the crimes of which the jury found Whitfield guilty, the convictions will stand despite their apparent inconsistency with the verdicts acquitting Whitfield on other charges.<sup>27</sup>

The record reflects that the inconsistent verdicts can be explained as a product of jury lenity. Therefore, contrary to Whitfield's assertion, the jury's verdicts did not amount to an illegal compromise.<sup>28</sup> The Superior Court correctly denied Whitfield's motion for a new trial.

### ***Conclusion***

The judgments of the Superior Court are affirmed.

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<sup>27</sup> *Id.*

<sup>28</sup> *See Wilson v. State*, 305 A.2d 312, 317 (Del. 1973).

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MUSTAFA WHITFIELD,	§
	§
Defendant Below-	§ No. 327, 2005
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware,
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID. 0210009174
	§
Plaintiff Below-	§
Appellee.	§

Submitted: October 7, 2005  
Decided: December 13, 2005

Before **STEELE**, Chief Justice, **BERGER**, and **RIDGELY**, Justices.

**ORDER**

This 13<sup>th</sup> day of December 2005, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Mustafa Whitfield, filed this appeal from the Superior Court's denial of his first motion for postconviction relief. We find no merit to Whitfield's appeal. Accordingly we affirm the Superior Court's judgment.

(2) The record reflects that, in February 2004, a Superior Court jury convicted Whitfield and two codefendants of multiple offenses including attempted first degree robbery and weapon charges. The Superior Court sentenced Whitfield to eleven years in prison followed by decreasing



levels of supervision. This Court affirmed Whitfield's convictions and sentences on direct appeal.\* In his motion for postconviction relief, Whitfield asserted two claims entitled, respectively, "Illegal Arrest and Detention" and "Search and Seizure in Violation of the Fourth Amendment." In essence, however, both claims challenge the veracity of the arresting officers' testimony and the lack of forensic evidence linking him to the crime. The Superior Court noted that Whitfield's identity as one of the perpetrators was argued vigorously at trial. The Superior Court concluded that the circumstantial evidence that tied Whitfield to the crime was abundant and thus sufficient for the jury to find him guilty beyond a reasonable doubt.

(3) After careful consideration of the parties' respective positions and the record below, we find it manifest that the judgment of the Superior Court should be affirmed on the basis of the Superior Court's well-reasoned decision dated June 27, 2005. The Superior Court did not err in concluding that Whitfield's motion for postconviction relief was without substantive merit. Moreover, because the sufficiency of the evidence was challenged on direct appeal, Whitfield's postconviction motion is barred as previously adjudicated under Superior Court Criminal Rule 61(i)(4).

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\* *Whitfield v. State*, 867 A.2d 168 (Del. 2004).

NOW, THEREFORE, IT IS ORDERED that the judgment of the  
Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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HABEAS, PaperDocuments

**U.S. District Court  
District of Delaware (Wilmington)  
CIVIL DOCKET FOR CASE #: 1:06-cv-00137-GMS**

000099

Whitfield v. Carroll et al  
Assigned to: Honorable Gregory M. Sleet  
Related Cases: 1:06-cv-00541-GMS  
1:06-cv-00512-GMS  
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 03/01/2006  
Jury Demand: None  
Nature of Suit: 530 Habeas Corpus  
(General)  
Jurisdiction: Federal Question

**Petitioner**

**Mustafa A. Whitfield**

represented by **Mustafa A. Whitfield**  
SBI#317479  
Delaware Correctional Center  
1181 Paddock Rd.  
Smyrna, DE 19977  
PRO SE

V.

**Respondent**

**Warden Thomas Carroll**

represented by **Elizabeth Roberts McFarlan**  
Department of Justice  
820 N. French St.  
Wilmington, DE 19801  
(302) 577-8400  
Email: elizabeth.mcfarlan@state.de.us  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**Respondent**

**Attorney General of the State of  
Delaware**

represented by **Elizabeth Roberts McFarlan**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

Date Filed	#	Docket Text
03/01/2006	<u>1</u>	PETITION for Writ of Habeas Corpus ( Filing fee \$ 5, receipt number 142589.)- filed by Mustafa A. Whitfield.(mwm, ) (Entered: 03/02/2006)
03/01/2006	<u>2</u>	REDACTED VERSION of <u>1</u> Petition for Writ of Habeas Corpus by Mustafa A. Whitfield. (Attachments: # <u>1</u> Appendix)(mwm, ) (Entered: 03/02/2006)
03/01/2006	<u>3</u>	Notice of Availability of a U.S. Magistrate Judge to Exercise Jurisdiction

		(mwm, ) (Entered: 03/02/2006)	000100
03/08/2006		Case assigned to Judge Gregory M. Sleet. Please include the initials of the Judge (GMS) after the case number on all documents filed. (rjb, ) (Entered: 03/08/2006)	
03/30/2006	<u>4</u>	ORDER notifying petitioner that AEDPA applies to petition and petitioner must file attached election form with the court. (Copy to pet. with AEDPA Form) Notice of Compliance deadline set for 5/1/2006. Signed by Judge Gregory M. Sleet on 3/30/06. (mmm) (Entered: 03/30/2006)	
04/06/2006	<u>5</u>	Letter to Clerk of the Court from Mustafa A. Whitfield regarding request for copywork and docket sheet. (mmm) (Entered: 04/07/2006)	
04/06/2006	<u>6</u>	AEDPA Election Form filed by petitioner requesting to amend 2254 to include a Memorandum of Law. (mmm) (Entered: 04/07/2006)	
04/28/2006	<u>7</u>	MOTION for Extension of Time to and including May 15, 2006, to amend 2254 petition - filed by Mustafa A. Whitfield. (mmm) (Entered: 04/28/2006)	
07/10/2006	<u>8</u>	ORDER granting <u>7</u> Motion for Extension of Time by Mustafa A. Whitfield. Amended memorandum due 7/14/2006. Signed by Judge Gregory M. Sleet on 7/10/06. (mmm) (Entered: 07/10/2006)	
09/28/2006	<u>9</u>	ORDER, Clerk shall serve by certified mail a copy of the petition, the order dated March 30, 2006, the AEDPA election form, the order granting the petitioner's motion to extend the time for filing an amended habeas petition, and this order upon the Warden and the Attorney General. Within 45 days of receipt, respondents shall respond as directed. (Copy to petitioner, Warden & AG). Signed by Judge Gregory M. Sleet on 9/28/06. (mmm) (Entered: 09/29/2006)	
10/02/2006	<u>10</u>	Postal Receipt(s) for the mailing of process to Attorney General of the State of Delaware. (mmm) (Entered: 10/02/2006)	
10/02/2006	<u>11</u>	Postal Receipt(s) for the mailing of process to Thomas Carroll. (mmm) (Entered: 10/02/2006)	
10/02/2006	<u>12</u>	ACKNOWLEDGEMENT OF SERVICE Executed as to <u>9</u> Order (AEDPA), and Service Order (2254). Acknowledgement filed by Thomas Carroll. (mmm) (Entered: 10/03/2006)	
10/03/2006	<u>13</u>	ACKNOWLEDGEMENT OF SERVICE Executed as to <u>9</u> Order (AEDPA) Service Order (2254). Acknowledgement filed by Attorney General of the State of Delaware. (mmm) (Entered: 10/03/2006)	
11/13/2006	<u>14</u>	First MOTION for Extension of Time to File Answer re <u>1</u> Petition for Writ of Habeas Corpus - filed by Thomas Carroll, Attorney General of the State of Delaware. (Attachments: # <u>1</u> Text of Proposed Order) (McFarlan, Elizabeth) (Entered: 11/13/2006)	
11/13/2006		SO ORDERED, re <u>14</u> First MOTION for Extension of Time to File	

Answer re 1 Petition for Writ of Habeas Corpus filed by Thomas Carroll, Attorney General of the State of Delaware, Set/Reset Answer Deadlines: Thomas Carroll answer due 12/22/2006; Attorney General of the State of Delaware answer due 12/22/2006. Ordered by Judge Gregory M. Sleet on 11/13/06. (asw) (Entered: 11/13/2006)

PACER Service Center			
Transaction Receipt			
12/21/2006 12:30:04			
<b>PACER Login:</b>	ci0009	<b>Client Code:</b>	
<b>Description:</b>	Docket Report	<b>Search Criteria:</b>	1:06-cv-00137-GMS Start date: 1/1/1970 End date: 12/21/2006
<b>Billable Pages:</b>	2	<b>Cost:</b>	0.16

000101

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

MUSTAFA A. WHITFIELD,	:	
	:	
Plaintiff,	:	
	:	
v.	:	C.A. No. 06-541 GMS
	:	
WILMINGTON POLICE DEPARTMENT,	:	
	:	
Defendant.	:	

CERTIFICATE OF SERVICE

I, Andrea J. Faraone, Esquire, hereby certify that on this 8<sup>th</sup> day of January, 2007, I filed the Appendix to the Opening Brief In Support of Defendant Wilmington Police Department's Motion to Dismiss, or in the Alternative for Summary Judgment Vol. I with the Clerk of Court using CM/ECF which will send notification of such filing(s) that this document is available for viewing and downloading from CM/ECF, I also mailed via U.S. Mail, postage pre-paid one copy to the following:

Mustafa A. Whitfield  
S.B.I. #317479  
Delaware Correctional Center  
1181 Paddock Road  
Smyrna, DE 19977

/s/ Andrea J. Faraone  
Andrea J. Faraone, Esquire (I.D. #3831)  
City of Wilmington Law Department  
Louis L. Redding City/County Building  
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Wilmington, DE 19801  
(302) 576-2175  
Attorney for Defendant